

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

CHELSEA GILLIAM, et al.,)
Plaintiffs,)

vs.)

DEPARTMENT OF PUBLIC SAFETY &)
CORRECTIONAL SERVICES, et al.,)
Defendants.)

CIVIL CASE NO.
1:23-cv-01047-MJM

9:01 a.m.

WEDNESDAY, NOVEMBER 22, 2023
Courtroom 5C
Baltimore, Maryland

TRANSCRIPT OF PROCEEDINGS
ZOOM TRO HEARING - VOLUME II
BEFORE THE HONORABLE MATTHEW J. MADDOX

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(Computer-aided Transcription of Stenotype Notes)

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Grey, et al., versus DPSCS, et al.
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P R O C E E D I N G S

(9:01 a.m.)

THE CLERK: The United States District Court for the District of Maryland is now in session. The Honorable Matthew J. Maddox presiding.

The matter now pending before this court is Civil Docket Number MJM-23-1047, Chloe Grey versus Department of Public Safety and Correctional Services, et al. This matter now comes before the Court for the continuance of the hearing for a Temporary Restraining Order.

Counsel, please identify yourselves for the record.

MS. WEBER: Good morning, Your Honor. Jessica Weber for the plaintiffs.

MS. GOLDEN: Deborah Golden for the plaintiffs.

MS. DI MARTINO: Good morning. Lauren DiMartino for the plaintiffs.

THE COURT: Good morning to all of you.

MS. KREVOR WEISBAUM: And I'm Sharon Krevor Weisbaum. I'm also counsel of record.

MR. MONOD: I'm Evan Monod for the plaintiff.

THE COURT: Good morning to each of you.

MS. RATLIFF: Good morning, Your Honor. Assistant Attorney General Merrilyn E. Ratliff on behalf of the defendants.

MS. DONOHO: And good morning, this is Kelly Donoho,

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1 Assistant Attorney General, for the defendants.

2 THE COURT: All right. Good morning to each of you.

3 Counsel, is there anything for us to take up before we
4 re-call Ms. Stewart to continue testimony?

5 MS. RATLIFF: Nothing from us, Your Honor.

6 THE COURT: Okay. Ms. Weber? You're on mute.

7 MS. WEBER: Apologies. Not for the plaintiff. Thank
8 you.

9 THE COURT: Very good. So Ms. Ratliff, you can
10 continue your examination of Ms. Stewart.

11 Ms. Stewart, do you understand that you're still under
12 oath?

13 THE WITNESS: I do.

14 THE COURT: Very good. Your witness, Ms. Ratliff.

15 MS. RATLIFF: Thank you, Your Honor.

16 CONTINUED DIRECT EXAMINATION

17 BY MS. RATLIFF:

18 Q. Good morning, Assistant Warden Stewart.

19 A. Good morning.

20 Q. Before we start with your testimony today, I wanted to ask
21 you, are you aware that Ms. Grey made some allegations of an
22 incident around I think it was 4:45 p.m. last evening?

23 A. I am.

24 Q. Okay. And what, if anything, has occurred after that
25 event?

Continued Direct Examination - Kimberly Stewart

1 A. So I was connected when the allegations were made on the
2 record, so immediately what I did was I had the officer that
3 was in the room at the time observing relieved. It turns out
4 that the officer that we relieved was a female officer, so not
5 the officer alleged to have been involved. We had her write a
6 report anyway.

7 After the hearing, I had Ms. Grey escorted up to the
8 Major's office to have the opportunity to write a statement.
9 We were able to identify one of the officers that she is
10 alleging that was involved. That officer has written a
11 statement essentially stating that there was no, you know,
12 negative interaction or conversation that occurred.

13 We are still working to identify the second officer
14 involved. Ms. Grey did not know their name or identity. She's
15 been advised that if she sees them in the facility again to
16 immediately report it to staff. The -- there were also two
17 case managers in the room yesterday the entirety of the
18 hearing. Those case managers had left by the time I found that
19 out last night, so this morning I've asked them to write
20 written reports.

21 I've only spoke with one of them. He has verbally told me
22 that he did not witness any negative interaction between staff,
23 that when Ms. Grey came out of the booth, she reported feeling
24 ill, that they made sure that there was a trash can near the
25 booth, but that was not as the result of any negative

Continued Direct Examination - Kimberly Stewart

1 interaction with staff that they observed in the courtroom, but
2 they did stay in the room and would not have been on the tier.

3 So the investigation is ongoing. At this point we haven't
4 been able to substantiate anything but we will continue to
5 investigate.

6 Q. Thank you. So we're going to pick up on your testimony
7 from yesterday. So did there come a time at Patuxent when
8 Ms. Grey was placed on administrative segregation?

9 A. Yes, on October 13th.

10 Q. Okay. And what led to Ms. Grey's placement on admin seg?

11 A. So I was the duty officer the month of October. The Chief
12 of Security, myself, and the Warden rotate. Any time there's
13 an incident going on in the facility the duty officer receives
14 a call.

15 I received a call that evening that a confidential
16 informant had approached the intel department saying that there
17 was a rumor going around the facility that Ms. Grey had engaged
18 in a sex act with another incarcerated individual, Mr. Carlton
19 Bell, that the sex act occurred during early setup for Muslim
20 service. Carlton Bell is a Muslim inmate. And that another
21 unidentified Muslim incarcerated individual had walked in on
22 them during the sex act, that the Muslim community was in an
23 uproar over the disrespect to their religion and to their
24 service.

25 Intel further advised me that Carlton Bell had recently

Continued Direct Examination - Kimberly Stewart

1 been released from disciplinary segregation for a physical
2 fight with a different Muslim individual and was already on the
3 outs with the Muslim community and that there was a concern
4 that the Muslim community may retaliate for this act of
5 disrespect against both Ms. Grey and Mr. Bell.

6 There was also a concern that if this rumor reached
7 Mr. Scott Brill, who has a history of being potentially
8 assaultive and he believed that the sex act had occurred, that
9 Ms. Grey and/or Mr. Bell could also possibly be in danger from
10 him as well. So with all of that alleged and made, a decision
11 was made to place both of them on administrative segregation
12 pending the investigation.

13 In an initial conversation with Ms. Grey, she reported to
14 Sergeant Owens, she admitted to being in the area where the
15 alleged sex act occurred, so we knew all of that on October
16 13th that she admitted that she was in the area, she denied
17 there was a sex act, but this rumor, true or not, was being
18 talked about in the facility and believed by the majority of
19 the facility, and due to the potential safety risk she was --
20 they were both placed on administrative segregation.

21 We also initiated the two SIRS and PREA complaint.

22 Q. So is placement on administrative segregation, when
23 something like that occurs, is that an ordinary response?

24 A. Yes. If there is any concern that an individual may be in
25 danger or that an individual poses a safety and security risk

Continued Direct Examination - Kimberly Stewart

1 to other people in general population, the immediate action is
2 to do the initial placement on administrative segregation.
3 That initial action is reviewed within 120 hours, and then a
4 decision is made from there whether or not to continue
5 administrative segregation, whether that's a temporary basis or
6 a permanent basis through a multidisciplinary team action.

7 Q. And you said there were also investigations started?

8 A. Yes. So then the allegation was that there had been a sex
9 act. At that time we're not going to know whether or not this
10 was a consensual sex act, not a consensual sex act, and whether
11 or not a sex act even occurred.

12 So after I received a call from intel, I called and
13 discussed the situation with the warden. We made the
14 determination that out of an abundance of caution that there
15 had been a nonconsensual sex act, we created two Serious
16 Incident Reports, one listing Ms. Grey as the alleged
17 perpetrator, one listing her as the victim and vice versa to
18 Mr. Carlton Bell. We reported what we knew at that time to IID
19 and asked them to launch an independent investigation.

20 Q. And what, if anything, did that investigation find
21 specifically?

22 A. So when Ms. Grey was interviewed by IID, I know from their
23 investigative report she withdrew the investigation, which
24 effectively ended the investigation, that she did not want to
25 pursue any charges or give any statements about the matter,

Continued Direct Examination - Kimberly Stewart

1 essentially, so it is listed as unfounded.

2 Q. And so this is as to the alleged sex act but did the
3 investigation look at anything else?

4 A. No. So IID was only concerned with whether or not there
5 would be criminal charges related to the matter. So when we
6 got the results of the IID investigation, that still left the
7 facility needing to make a determination operationally on the
8 safety and security of Ms. Grey.

9 Q. So was that investigation, I guess, proceeded, like did
10 it --

11 A. Yes. So that investigation was ongoing. There was an
12 initial -- there was a -- so we have regular administrative
13 segregation meetings. Again, this is a multidisciplinary team.
14 We have treatment staff there, custody staff there. I
15 represent the administration. We have intel and various
16 different departments that have input into the matter.

17 So there was a meeting held on October 17th. At that
18 point, we did not have the completed IID investigation. That
19 was still ongoing, but we knew that that was an investigation
20 into a criminal matter and that IID wasn't going to tell -- you
21 know, wasn't going to weigh in about operational concerns,
22 safety concerns.

23 The team met, we discussed Ms. Grey's entire history of
24 being at Patuxent. She's repeatedly made allegations that
25 other inmates are harassing her, she has not given us

Continued Direct Examination - Kimberly Stewart

1 sufficient detail to launch investigations in most of those
2 cases, that she makes general allegations that staff don't do
3 enough to stop it, again, without listing any staff names,
4 dates, incidents. Now we have this incident going on and a
5 decision was made at that point that she was not appropriate to
6 return to general population at Patuxent.

7 Q. And so did anything -- did Ms. Grey make any additional
8 complaints around that time, October 17th, like specific
9 complaints? I know you said there were general complaints.

10 A. Yeah, no, not specific complaints. She filed several ARPs
11 while being on administrative segregation saying that she was
12 safe to return to population, requesting to go back to D3, the
13 male Georgetown tier, saying that she would sign body waivers.
14 She wanted to return to population.

15 However, we have to look at the safety and security of the
16 facility as a whole and our staff. So even if she's willing to
17 take a risk and return to general population, should there be a
18 security incident that's going to require an emergency response
19 from staff, potentially placing staff and other IIs,
20 incarcerated individuals, in danger as well. So we have to
21 kind of look at things as a whole.

22 we definitely take into consideration the wishes of the
23 incarcerated individual, and of course it was a big decision
24 because we know that she's in a college program. We had
25 still -- the team had still made a unanimous decision to

Continued Direct Examination - Kimberly Stewart

1 transfer her; however, I believe that it was because her
2 attorneys had contacted DPSCS through the AG's Office. We were
3 asked to place that on hold, complete -- let IID complete their
4 investigation and then reconvene another administrative team
5 action review after we knew the results of the IID
6 investigation.

7 Q. And so at that time, the IID investigation you're
8 referencing is the IID investigation into the potential threats
9 from the Muslim community and/or Mr. Brill?

10 A. Right. Now, again, so that was the initial report on
11 October 13th. IID, again, started doing their investigation, I
12 want to say they interviewed her on October 20th but I would
13 have to refer to their time. Again, the first admin seg
14 decision was October 17th. I believe that IID was asked to
15 essentially speed up their investigation. They have, you know,
16 longer to investigate. They came out the 20th. We did not
17 know until I believe it was November 3rd that we got the
18 results from IID that the investigation was unfounded due to
19 the withdraw.

20 Of course, during this time our internal intel department
21 is still investigating the matter. They were at some point
22 able to determine if this was not a Muslim service but an AA/NA
23 service. There is some responsibility, I think, that Ms. Grey
24 has into, you know, this rumor and situation even developing.
25 She alluded in her testimony yesterday that she did not have a

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1 hard pass. The significance of that, though, was not
2 explained.

3 At Patuxent, participation in religious services and
4 volunteer activities, whether it be a Muslim service, AA or NA
5 meetings, is preapproved ahead of time and cleared. And the
6 individuals that are cleared to participate in those activities
7 are given a hard pass that they keep on purpose -- on person
8 and it's a standing pass to go.

9 She alleges that she was given kind of a soft pass, a
10 paper pass by the school officer. She had permission to be in
11 the education building. Passes are supposed to be given out by
12 the tier officer which is, you know, a daily practice that
13 Ms. Grey would be aware of.

14 We haven't been able to confirm that the school officer
15 gave her that soft pass to go to AA/NA service, but even if
16 they had, that would not have been following proper procedure.
17 So you know, Ms. Grey testified that she's aware of the hard
18 pass system. She should not have been in Corridor N where this
19 sex act allegedly occurred in the first place.

20 We haven't been able to determine to a degree of certainty
21 to charge anyone for the sex act, but in the totality of the
22 circumstances intel has determined that the sex act likely did
23 occur but not rising to the level that would cause us to charge
24 her with rule violations.

25 However, with administrative segregation, that's why it's

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1 different from disciplinary segregation anyway. We still have
2 to consider the impact to safety and security of the facility.
3 But I say all that to say we were, at the next admin seg team,
4 both during the team and after in discussions with the warden,
5 there was a serious consideration the week of November 6th with
6 us giving this one more chance and returning her to general
7 population. Unfortunately, then some other incidents occurred
8 that took that possibility off the table, at least in the
9 immediate.

10 Q. I want to back up just briefly to I think it was the first
11 segregation review meeting on October 17th. Was -- did
12 Ms. Grey make additional complaints about a specific inmate, a
13 sanitation worker?

14 A. Yes. So I'm sorry, that actually happened I believe same
15 day. So Amanda Decker, the initial social worker that had seen
16 her on September 26th, went to do a check-in on that same day.
17 And Ms. Grey made an allegation that the sanitation worker had
18 sexually propositioned her and when Ms. Grey had turned him
19 down, threw water on her and then she threw water back on him
20 in retaliation. That incident also was ordered to be reported
21 to IID. We did the Serious Incident Report. And again, so
22 that, you know, is a factor that every time we turn around
23 there's something new happening. There's a new allegation,
24 there's a new concern that there are safety issues in the
25 population at Patuxent.

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1 So that investigation was also launched and pending at
2 that time as well, in addition to the Carlton Bell incident.
3 And I also don't believe -- we didn't have the results of the
4 WCI incident back either, so now at this point we have four
5 separate IID investigations out there open.

6 Q. Are you aware of whether the IID investigation into the
7 incident with the sanitation worker came to a result?

8 A. Ms. -- when we got the results of that investigation,
9 Ms. Grey had also signed a withdraw for that incident as well.

10 Q. And while Ms. Grey is on administrative segregation, we
11 talked a little bit yesterday about the layout of the cells.
12 But was Ms. Grey provided with pens and paper?

13 A. Yes. So I looked into -- because we received a complaint
14 before that her writing materials were taken away. During the
15 time she was on administrative segregation, she was given two
16 work packets from Georgetown that she turned in in a very fast
17 turnaround time period. She filed at least 11 separate ARPs.
18 She had full tablet access from 10/13 to 11/10 with phone
19 dialer and testing abilities. And then when she was
20 interviewed by Captain Carter she didn't report any issues with
21 access to writing materials.

22 I am not aware of any time that her access to writing
23 materials were interfered with at all, and I think the written
24 documents that we received from Ms. Grey show that she had
25 regular access to ARPs and writing materials.

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1 Q. To your knowledge, are all 11 of these ARPs being
2 investigated or have been investigated?

3 A. Yes.

4 Q. Was Ms. Grey provided with -- or does Ms. Grey have access
5 to razors when she's on administrative segregation?

6 A. By policy, she would have access to razors while on
7 administrative segregation. Despite the fact we received 11
8 separate complaints, that's not one of them. So we haven't
9 been able -- there's been no investigation into whether or not
10 her access to razors has been unfairly interfered with because
11 that complaint was never lodged with the facility. Yesterday
12 was the first time I became aware of that complaint.

13 Q. Was there any -- what, if anything, do you plan to do in
14 relation to that complaint about the razors?

15 A. Well, yesterday I called the Captain for the building and
16 I clarified that the policy is that admin seg can have access
17 to razors. I did not ask about disciplinary segregation so
18 that may be an issue, but at least administrative segregation
19 she's able to order them from Commissary. Keith is our
20 contractor. If she's having problems getting that, she can
21 file a complaint on the case complaint form if they're not
22 being delivered to her. She can also file an administrative
23 remedy complaint. That would have to be -- she would have to
24 take that action to launch kind of a formal investigation.

25 I don't know the circumstances of her complaint. Is she

Continued Direct Examination - Kimberly Stewart

1 saying that Keith delivered it and an officer stopped her, is
2 she saying that Keith won't deliver it, I don't know. But in
3 the immediate, I made sure I clarified with my staff that they
4 are not to interfere with access for administrative
5 segregation.

6 Q. And as an inmate or as an incarcerated individual on
7 administrative segregation, would Ms. Grey have been provided
8 with shower opportunities?

9 A. Yes. There are at least three shower opportunities per
10 week.

11 Q. And we covered recreation access yesterday.

12 A. Yes.

13 Q. What about medical care, medical rounds? What kind of
14 medical rounds occur on segregation?

15 A. So there are regular rounds that occur, I believe we have
16 three medication times per 24-hour period that there would be
17 regular rounds on. And then they also -- and an incarcerated
18 individual has an opportunity to turn in any sick call slips or
19 anything as to as the nurses doing their rounds.

20 Q. Do you know what "KOP" and "DOT" mean?

21 A. I know KOP is "keep on person." I don't know what DOT
22 stands for.

23 Q. What does "keep on person" mean?

24 A. So medications that are authorized for keep on person
25 means that the incarcerated individual can keep those

Continued Direct Examination - Kimberly Stewart

1 medications on their person in a blister pack and
2 self-administer their medications daily.

3 Q. Is that a -- do incarcerated individuals on admin seg have
4 their medications keep on person?

5 A. No. So once an individual is moved to administrative
6 segregation, all medications, even if they're keep on person
7 authorized in general pop, are confiscated and given to medical
8 for administration. Of course, you know, there are a lot of
9 different reasons that somebody could be on administrative
10 segregation, but just for safety purposes, you know, it's a
11 stressful time for an incarcerated individual. Just as a
12 policy we take all medication.

13 Q. And as you said, the transfer to admin seg can be
14 stressful or there can be many considerations, and you
15 referenced before that there was -- there were meetings to
16 review placed on an admin seg. How often is the formal
17 occurrence at those meetings?

18 A. By pol -- so it's different and that's by my order, but by
19 policy, the initial placement is done kind of on an emergency
20 basis. There's the initial review within 120 hours, and then
21 after that, if at the initial review the team decides to keep
22 the person on administrative segregation, there's a review
23 every 30 days.

24 However, at Patuxent, when I took over responsibility for
25 this function in January of 2023, I've been on a mission to

Continued Direct Examination - Kimberly Stewart

1 reduce our use of administrative segregation, so I have ordered
2 that my staff bring up every person on administrative
3 segregation at every weekly meeting. So there's always been a
4 meeting every week but you only get docketed for that meeting
5 every 30 days.

6 Just under my authority and ability to order more frequent
7 reviews, I review everybody every week to see if there have
8 been any changes and if we can either move somebody out, put
9 them in general population at another facility, return them to
10 our general population, but with the aim to reduce our use of
11 administrative segregation.

12 Q. Have you seen any results to that initiative to reduce the
13 use of segregation?

14 A. When I took over this function in January of this year, we
15 had two full tiers of administrative segregations, Mary 3 and
16 Nancy 3. In the last several, I would say six months, at
17 least, we have an average of six people or less on
18 administrative segregation. I closed an entire tier and our
19 current admin seg tier stays mostly empty except for a handful
20 of individuals.

21 Q. So you mentioned that Ms. Grey was part of -- or we know
22 that Ms. Grey was part of the Georgetown program. Who is the
23 liaison between the institution and Georgetown?

24 A. I am.

25 Q. And you said that Ms. Grey was given multiple assignments,

Continued Direct Examination - Kimberly Stewart

1 right?

2 A. Yes. So Georgetown University obviously is a separate
3 organization. They don't fall under the jurisdiction of DPSCS.
4 We have a Memorandum of Understanding, an MOU in place with
5 them to provide these service to the incarcerated individuals.
6 But as far as the educational programming, that is not directed
7 by me at all. I'm essentially just the operational liaison to
8 facilitate the program operating in the facility.

9 So Georgetown University gave us two work packets, but
10 it's up to them whether or not they send her, you know,
11 busywork. By policy, she is not assigned as an educational
12 student right now. She's assigned to admin -- well, then
13 administrative segregation, now disciplinary segregation. The
14 same day that Georgetown gave us work packets, we delivered
15 them to Ms. Grey without delay.

16 Q. And is it ordinary for an incarcerated individual on
17 administrative segregation to participate in the Georgetown
18 program?

19 A. So it is not ordinary for individuals on either
20 administrative segregation or disciplinary segregation to
21 continue to participate because it's supposed to be a temporary
22 action anyway. We do have some DOC facilities that have
23 long-term admin seg placement that have procedures in place for
24 continued participation, but here at Patuxent, our goal is if
25 we can't return you to general population, we find another

Continued Direct Examination - Kimberly Stewart

1 facility where you can safely exist in general population
2 because, again, the goal is to reduce the use of restrictive
3 housing. So it's supposed to be a very temporary basis anyway.

4 So again, prior to me taking over, it was not normal for
5 there to be any participation in the program. However, both
6 with the Georgetown program and our GED program, education is
7 very important to me, my prior position was as a special
8 assistant to now-Secretary Scruggs, then Assistant Secretary
9 Scruggs over program services. I know that education has the
10 biggest impact on institutional safety and security and on
11 recidivism. So I have made arrangements to allow this to
12 happen. I allow incarcerated individuals to take their
13 scheduled GED test even if they got put on lockup. It's not a
14 right under policy but I think it's important for public safety
15 to encourage it as much as possible.

16 Q. I'm going to skip back to I believe you said November 6th.
17 So Ms. Grey is -- had been reviewed multiple times on admin seg
18 and it had been determined, I think you've testified, that
19 perhaps the transfer was necessary. Where was the transfer
20 considered to be to?

21 A. She was actually -- before her attorneys reached out to
22 the AG's Office and there was a decision to hold, she was
23 actually scheduled at one point to transfer to JCI, which is
24 another facility with a college program. University of
25 Baltimore operates out of JCI. We can't direct that she be

Continued Direct Examination - Kimberly Stewart

1 placed in it. It would be up to the University of Baltimore.
2 But that would have given the opportunity, one, for her to be
3 in general population; and two, to be at another facility with
4 a college program.

5 Q. And so what, if anything, happened on November 6th?

6 A. So November 6th was a Monday. The next admin team meeting
7 was scheduled for the 7th and that we knew we were going to
8 take a serious look and see if there was any way possible that
9 we would feel comfortable returning her to general population.
10 Because again, that's the aim. Is there any action that we can
11 take to safely return an individual to general population.

12 So I asked our intel department, write up an investigative
13 report, give me a summary, give the team a summary for the next
14 day. On that November 6th, that Monday morning, intel came and
15 asked to speak with me. They had been reviewing the phone
16 calls to determine, you know, of Ms. Grey, of other
17 incarcerated individuals to determine what was the threat level
18 and do an assessment on that.

19 In reviewing Ms. Grey's phone calls, a determination was
20 made that she believed that she has identified the confidential
21 informant who was ultimately responsible for her being placed
22 on administrative segregation in the first place and she had
23 made a statement to the effect of that she was going to get
24 back at that confidential informant.

25 Q. And so that's information that IID received. It wasn't

Continued Direct Examination - Kimberly Stewart

1 necessarily verified, it's just information that you make
2 determinations based on at that time, correct?

3 A. So that wasn't through IID because IID is our independent
4 investigative agency. That was through our internal intel
5 department and that was through a recorded phone call.

6 Q. So what, if anything, happened on -- sorry, November 7th,
7 the day after?

8 A. Yes. So then on the 7th, we had the team meeting again.
9 Again, it was a unanimous recommendation by the team to myself
10 that Ms. Grey not be returned to general population, that there
11 was too much of a risk now not only to her safety, but now we
12 have the safety of the confidential informant to consider as
13 well.

14 So we took some steps, we went to the person that Ms. Grey
15 believed was the confidential informant and asked her to write
16 a statement saying whether or not, you know, there was any fear
17 for safety but, of course, what we can't do is tell that
18 individual the contents of the phone call over her by Ms. Grey.
19 She would not have a right to know about another, you know,
20 incarcerated individual's phone call. So we did get a
21 statement, as far as I know, I have no problems. But again,
22 that person did not have all of the information.

23 So then I was briefing the warden about what we knew at
24 that point. At this point we were pretty -- pretty confident
25 that there was not a high risk of threat from the Muslim

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1 community. We were very confident based on listening to
2 Mr. Brill's phone calls that he did not believe the rumor and
3 therefore he would not pose a risk to Ms. Grey.

4 However, we still have that there's been incident after
5 incident this vacillation from Ms. Grey between I'm horribly
6 harassed here and I want to stay here and, you know, I'm
7 signing body waivers and going back to D3 where I have no
8 problems and I'm safe. So we don't have a consistent message
9 from Ms. Grey and now we have this potential threat to the
10 person that she believes was the confidential informant placing
11 her on admin seg.

12 With all of that, the team's recommendation to me was that
13 she not return to general population. I then went and talked
14 to the warden about it. You know, we know the significant
15 impact that this decision is going to have on Ms. Grey, and
16 it's not a decision that we take lightly. So he asked, go
17 back, you know, evaluate with the confidential informant,
18 evaluate with intel, get me as much information as you can. At
19 this point, I operate as the warden's designee. I knew that
20 this was a significant decision and I had asked the warden to
21 be the final reviewing signature on this. I was going to make
22 a recommendation and I was going to ask the warden to exercise
23 his authority as warden to be the final reviewing signature.

24 So we went back to look at more information and that's
25 when we pulled the text messages and realize that there had

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1 been multiple rule violations that we believed were committed
2 by Ms. Grey.

3 Q. And what were the types of violations that you discovered?

4 A. So first, the fact that Ms. Grey and Mr. Brill had been
5 using a third party to communicate essentially the equivalent
6 of a three-way phone call. Ms. Grey would text, at that time
7 it was Mr. Brill's sister, Crystal Brill. She would text the
8 sister, the sister would copy and paste the entirety of the
9 text to Mr. Brill. Mr. Brill would read it, respond, and then
10 the same thing would happen going back towards Ms. Grey.

11 So that in and of itself right there, administrative
12 segregation is exactly that, it's supposed to be a segregation
13 from the general population and there's not supposed to be
14 physical contact or ongoing communication between individuals
15 on segregation and the general population. So that was one
16 rule violation, just the fact that they were communicating.

17 Then when you read their text messages, it was obvious
18 they referred to, you know, kind of explicit language, talking
19 about, you know, "Can't wait to get my hands on juicy tits,"
20 "see that fat ass," things like that. They referred to their
21 secret hideout place. It was clear that they had been having
22 ongoing sexual liaisons by nature of being assigned on the same
23 tier. So that was one rule violation.

24 Then a lot of the text messages were done in code and
25 talking about money transactions, and we have not deciphered

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1 all of that code to this point but we have been able to
2 decipher that they are talking about various gang leaders
3 within the facility and the movement of money between gangs and
4 who's doing what, who's attending what.

5 Finally, yesterday there was talk of the 104 threatening
6 language Ms. Grey was not convicted of, that's the only charge
7 she was not convicted of, but Mr. Brill was. The text message
8 came from Mr. Brill to Ms. Grey and was a reference to the
9 confidential informant and it was a message that "I saw that
10 individual, they're still breathing."

11 So that gave us some confirmation of our fear that this
12 alleged confidential informant may be -- their safety may be at
13 risk. The reason Ms. Grey was not convicted of that charge was
14 because the text message came from Mr. Brill, but this was a
15 conversation they were having together which is why they were
16 both charged with that rule violation.

17 Q. So if an incarcerated individual who was, say, currently
18 housed on general population had engaged in this type of
19 behavior and Patuxent discovered it, what would be the
20 response?

21 A. They would also be written a notice of rule violation,
22 access to the tablet would be locked down pending the hearing
23 due to the suspicion for the misuse of the tablet privilege,
24 and because -- so the misuse of the tablet itself is a Category
25 4 violation. It was the content of the messages that led to

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1 Category 1 rule violations being charged. If another
2 individual that the content of their messages also
3 substantiated a Category 1 rule violation, they would be moved
4 to segregation pending the hearing as well.

5 Q. So it's fair to say that if an incarcerated individual
6 violates rules that are subject to investigation, that II is
7 moved to administrative segregation?

8 A. Yes. For example, I can think of at least one other case
9 that we actually had here. We read the content of the messages
10 and he was making a threat that he was going to beat his cell
11 buddy. We moved him to segregation and charged him with Rule
12 104 for threatening language based on the content of the text
13 messages.

14 Q. And let's see. And you said Ms. Grey's tablet was
15 confiscated at that time, right?

16 A. So the reason for the confiscation of the tablet, normally
17 we would have just shut down the tablet and left it in her
18 possession. When we read the text messages, there's a profile
19 picture that the IIs can save to their profile, and the profile
20 picture of the tablet Ms. Grey had in her possession, the
21 profile picture was that of Scott Brill.

22 So when we had talked to staff that actually packed her up
23 when she was moved over to administrative segregation, they had
24 each other's property intermixed between their two cells. So
25 the first concern and the reason why the tablet was confiscated

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1 was because we thought that she might have the tablet that was
2 issued to Scott Brill, that they might have swapped. Once we
3 confiscated it, which happens later in the day and we're able
4 to determine that this was just an issue with the profile
5 picture and not a swapping of tablets, we returned the tablet
6 but had the phone dialer locked down.

7 Q. And why was that?

8 A. Because we knew at that point that our investigation had
9 revealed that she was misusing and abusing her privilege of
10 having the tablet, which is a privilege and not a right, so we
11 locked it -- we made the decision she was going to be charged
12 with any applicable rule violations and pending the results of
13 the hearing, we will lock it down until she has that hearing.

14 I can tell you that our intent was to lock down both the
15 phone dialer and the text messages, but I can see from the
16 record of the text messages that some were still somehow going
17 through.

18 Q. And so what, if anything, happens the next day, November
19 9th?

20 A. So the next day -- If I can just refer to my notes for the
21 dates.

22 Q. Did there come a time that there was an incident in the
23 recreation yard?

24 A. Yes. So that's what I was looking for was that, that day.
25 So my office and the Chief of Security's office is in a

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1 hallway, and we are across the hall from the windows that
2 overlook the recreation yards for segregation in CMHCJ. Across
3 the hall from me is the office of Lieutenant Gaskins, who is
4 our Environmental Safety Compliance Officer, and his assistant
5 who's our Fire and Safety Officer. So Sergeant Ogboye and
6 Lieutenant Gaskins are in the offices that are directly across
7 the hall.

8 Apparently they observed behavior from Ms. Grey. They
9 went and got the Chief of Security to come out and look out the
10 window and observe the behavior. The Chief of Security came
11 across to my office and said, come look at this. There were
12 reports written about some language that was observed by both
13 Lieutenant Gaskins and Sergeant Ogboye. I did not witness the
14 solicitation of a sex act.

15 When I came out and into Lieutenant Gaskins' office,
16 Ms. Grey was looking up at the window -- so the yard is in --
17 it's a concrete -- a large concrete area, essentially, that is
18 in between the tiers. It's bordered by the tiers. So it's
19 basically this big square and on either side of the yard
20 looking up are the windows to the dayroom of all of the tiers
21 on our four floors above from the yard.

22 So she was looking up to the windows and communicating
23 with other incarcerated individuals that were out in the
24 dayroom. What I saw her doing was sticking out her tongue with
25 both middle fingers up like in a playful way. I mean, I don't

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1 want to be disrespectful to the Court. I can demonstrate, but
2 essentially she's got her tongue hanging out, she's got both of
3 her middle fingers up waving like this, smiling, laughing, and
4 talking to them. But at that point is when Lieutenant Gaskins
5 had been calling the yard officer to remove her.

6 Q. Did you witness any other actions by Ms. Grey?

7 A. Yes. So the yard officer called her over and signalled
8 for her to turn around to be handcuffed. Again, we're a
9 maximum security institution. Any individual on segregation,
10 administrative or disciplinary, is escorted in handcuffs
11 through the facility.

12 Before she turns around to comply with being handcuffed,
13 she put her hands down in her pants into the genital area, and
14 it looked like she had put something in her pants. I did
15 witness it but so did Lieutenant Gaskins so he acted first. He
16 called down to the -- when you exit the yard, you exit into
17 Corridor 1. He called the Corridor 1 officer on the phone and
18 said to hold her there and not escort her back to her tier.
19 Then he made a phone call to have two female officers relieved
20 so that they could conduct a strip search to determine whether
21 or not she had been hiding contraband.

22 Q. And was that strip search conducted?

23 A. Yes. Prior to the strip search being conducted, we have
24 reports from staff that before the female officers were even
25 there to conduct the strip search, Ms. Grey knew that she was

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1 waiting for officers to arrive to search her, that she started
2 yelling that she was going to file a PREA on them. So they did
3 come, the strip search did occur. We had all of the officers
4 involved write reports. Because Ms. Grey was saying that she
5 wanted to make a PREA complaint, we had Lieutenant Goldman
6 initiate those procedures as well.

7 In the middle of that, she ended up having an attorney
8 visit as well, but she was seen by medical -- I believe she was
9 seen by medical first. We were alerted that her attorney was
10 there to visit her, allowed her to go on the attorney visit and
11 then brought her back up to interview her for a report and do
12 the SIR and the PREA report to IID.

13 THE COURT: Let me just interrupt here briefly.

14 Ms. Stewart, could you lower the blinds behind you? I'm
15 just having trouble seeing your face.

16 (Pause in Proceedings.)

17 THE COURT: I can see your face for a time period but
18 then I think the movement of the sun was getting a little worse
19 there, so thank you for doing that.

20 THE WITNESS: Got it. No problem.

21 BY MS. RATLIFF:

22 Q. And so the -- Assistant Warden Stewart, the SIR and the
23 PREA complaints that you referenced was being initiated on
24 November 9th. What was your understanding of Ms. Grey's
25 complaints in those?

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1 A. So at that time on the 9th, she started to write an inmate
2 statement form, started to write the first sentence and then
3 stopped and refused to write anymore after that.

4 When Lieutenant Goldman interviewed her, she had verbally
5 stated that her complaint at that time was that the PREA
6 complaint was based on two things: that the strip search was
7 ordered by a higher power, and the officers that strip searched
8 her were disrespectful. So that was what was in the initial
9 preliminary SIR that was reported to IID.

10 The next day after some other things, there was an update
11 to that, but that is what the complaint was on the 9th.

12 Q. So as of the 9th, did Ms. Grey make any -- to your
13 understanding, did Ms. Grey make any complaints about being
14 pushed down the stairs by an officer?

15 A. None, not to custody or to medical, which she was seen by.

16 Q. Let's talk about strip searches in Patuxent. When would a
17 strip search be necessary or ordered?

18 A. So there are a lot of different situations. There are a
19 lot of routine strip searches that happen here, more so than at
20 other facilities with lower security levels.

21 So for example, we have a lot of individuals that are
22 strip searched as a matter of policy, just every time they
23 leave work, we strip search all of our dietary workers, all of
24 our maintenance workers, all of our MCE workers and any of our
25 sanitation workers that work off of the housing unit before

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1 they can return into the general population facility. We also
2 strip search all individuals returning from visits whether they
3 be attorney visits or personal visits or clergy visits.

4 There are also the situations like, for example, when she
5 was leaving the yard when there's some reason to have a
6 reasonable suspicion that there may be a possession of
7 contraband that can't be discovered on a normal pat search. So
8 if circumstances dictate, there would be a strip search done as
9 well.

10 Q. That's based on a reasonable probability, not certainty
11 that there's something being secreted, right?

12 A. Correct. There are a lot of times where we do a search
13 and there's either nothing there, sometimes it could be because
14 there never was anything there, sometimes it could be because
15 there is a delay in moving the person to, you know, a secure
16 and secluded area to do the strip search for privacy reasons
17 they're able to, you know, get rid of the contraband.

18 Q. And you said -- so strip searches after visits includes
19 after attorney visits, right, I think you did say?

20 A. Yes.

21 Q. Okay. And you said women officers performed at least the
22 search that you observed on Ms. Grey?

23 A. Yes. That's her -- by policy, individuals can go through
24 a process by which they indicate their preference on a card
25 that they're required to keep on person. When I heard

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1 Lieutenant Gaskins ordering that somebody strip her, I informed
2 him that I was aware that her preference card was female, which
3 is why he called for two female officers to be relieved.

4 Q. So the policy that governs this exception card, does that
5 a hundred percent guarantee that the searches will be performed
6 by a female correctional officer if the II prefers a female
7 search?

8 A. So the responsibility is on the incarcerated individual to
9 carry that preference card on them at all times and to produce
10 it ahead of the search. The reason for that is, every staff
11 member here, the hundreds of staff members that we have here,
12 cannot be expected to know in advance who has what preference.

13 So first the incarcerated individual is required to keep
14 it on their person. If they don't have the card on their
15 person, I would hope that my staff would take a minute if
16 circumstances allow and it's not an emergency to see if they
17 could double-check the case management records, but they're not
18 actually required to do so.

19 The other circumstance by which it may not happen is in an
20 emergency situation or exigent circumstances. And that goes
21 with individuals that are born female as well. If there is an
22 emergency circumstance, they are subject to being strip
23 searched by a male officer. Of course, you know, I have not
24 experienced that in my career where we have not been able to
25 accommodate.

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1 Q. So let's move on to November 10th, which is the day after
2 the incident in the yard and Ms. Grey's attorney visit and the
3 strip search. What, if anything, occurred on November 10th?

4 A. So from the 7th, when we discovered the text messages, all
5 the way through the 9th, there was an investigation into the
6 text messages, there was a significant volume of text messages
7 to go through, and much of them were written in code. So the
8 investigation was ongoing into what rule violations had been
9 committed.

10 On the 10th, that investigation had been completed, the
11 notice of inmate rule violations had been prepared and signed
12 off on by the reporting officer and by supervisors. So on the
13 10th, an officer reported to Ms. Grey's cell to serve her with
14 two notice of rule violations; one regarding everything in the
15 text messages, and one based on the incident that had happened
16 prior -- on a prior day in the yard for her behavior there as
17 well.

18 Q. What time of day was Ms. Grey served with those notices?

19 A. I believe it was sometime in the morning. I can pull up
20 the system to tell you if we need to know the exact time or are
21 you looking for the order of events?

22 Q. Yes, that's what I'm getting at.

23 A. Yes.

24 Q. Yeah. So what were the order of events, if anything else
25 occurred that day, what else occurred and in what order?

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1 A. So what started the events of November 10th was, again, I
2 believe it was Sergeant Owens had reported to her cell to serve
3 her the infraction. Sergeant Owens is a member of the intel
4 department. Immediately from the tier, she became hysterical
5 and was screaming, I need to file a PREA, I need to file a
6 PREA, your officers assaulted me, et cetera.

7 He reported it to supervision. Lieutenant Goldman was
8 there that day as well. Ms. Grey was escorted, they attempted
9 to have her seen by medical. She refused to see medical staff
10 at the facility and refused to make a statement to custody
11 staff. However, verbally, she was making allegations of a more
12 serious nature of a sex assault and a physical assault with
13 being pushed on the stairs. For that reason, medical gave an
14 order for her to be transported to Mercy Hospital for a SAFE
15 evaluation that we normally have trained staff to do in the
16 facility when there's been a report of sexual assault, so she
17 was transported to Mercy.

18 Q. And to your understanding, was Ms. Grey asserting that
19 this assault occurred that day on November 10th?

20 A. No. She was asserting that it had occurred the day before
21 prior to being placed in the yard. Like even though she had
22 the opportunity to make a PREA complaint the day before, she
23 did not include that in the complaint on the 9th.

24 Q. And are these allegations that Ms. Grey made on November
25 10th currently being investigated?

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1 A. Yes. So what we did was we took the same Serious Incident
2 Report that we had submitted on the 9th, we called IID, let
3 them know the updated information that we received on the 10th.
4 We add that information onto the preliminary Serious Incident
5 Report from the 9th and reissued it to the whole distribution
6 list that we send these complaints to with the updated
7 information so that IID could include that in their
8 investigation.

9 Q. So when an incarcerated individual is served with a
10 ticket, let's say that II is on general population, would that
11 II remain on general population having been served with a
12 ticket?

13 A. So it depends on the seriousness of the ticket, but
14 because they were Category 1 violations, the incarcerated
15 individual would go to the segregation tier pending the
16 hearing.

17 Q. And I think you mentioned that Mr. Brill was also charged
18 with some violations; is that correct?

19 A. Correct. So Ms. Grey had two separate tickets; one for
20 the yard incident and one related to the text messages.
21 Mr. Brill was charged, of course, only related to the text
22 messages. He was charged with the same rule violations and he
23 was moved over to the segregation tier.

24 Q. And do you know -- I'll strike that. I'm sorry.
25 Did Mr. Brill remain on segregation after the 10th?

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1 A. Yes. So both of them were served on the 10th and their
2 status changed -- well, both of their status changed, his from
3 general population to segregation pending adjustment;
4 Ms. Grey's from just straight admin seg to admin seg pending
5 adjustment. They both had their hearing on November 14th.
6 Both were convicted of Category 1 violations and issued various
7 sanctions that included disciplinary segregation so then he
8 stayed there and the status changed to just straight
9 disciplinary segregation.

10 Q. And to your knowledge, what access -- during this time
11 when Ms. Grey was on administrative segregation, I know we
12 talked about her tablet being taken at least once and returned
13 with the phone dialer shut off. Do you -- to your knowledge
14 was Ms. Grey ever deprived of her tablet at any other time?

15 A. No. I reviewed the record of her text messages. Prior to
16 her going on administrative segregation on October 13th, she
17 appears to have not used. So I did a search from October 1st
18 through November 10th, and from before the 13th there were no
19 text messages at all. From the 13th through November 10th --
20 or I'm sorry, it may have been the 9th whenever the tablet was
21 taken after we discovered the text messages, there were text
22 messages every day the month of October is what I checked
23 because yesterday there was an allegation that there were two
24 times when her tablet was taken, one in the month of October,
25 one in the month of November.

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1 So I searched the whole month of October. From the 13th
2 through October 31st, there is a text message sent and received
3 every single day, which indicated to me that she did have her
4 tablet the entire time. I can say that despite previous
5 testimony, the only time I ordered her tablet confiscated was
6 after I saw Scott Brill's picture as her profile picture in
7 November.

8 Q. And what about Ms. Grey's access to the phone, had that
9 ever been cut off or denied?

10 A. No. So on our segregation tier -- actually, we recently
11 got the tablets. We were the last facility in the state to get
12 the tablets and it solved a problem for us that we don't have
13 telephones on the administrative segregation tier. We had been
14 using the roller phone, which unfortunately a lot of
15 incarcerated individuals tamper with, especially on segregation
16 tiers. So the tablet itself is a phone and she had that in the
17 cell.

18 Q. Did Ms. Grey have access to pay phones or any other phone
19 access as well?

20 A. There may be -- so now that we have the tablets, I believe
21 on the seg -- I would have to check and see what other phone
22 access there is on the segregation tier, but we really rely on
23 those tablets now. They're the most reliable phones that our
24 segregation individuals have access to.

25 Q. So at any time between -- at any time in November or

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1 October did Ms. Grey request to transfer to Patuxent Institute
2 for women?

3 A. There has never been a request to my knowledge since she
4 has been at Patuxent to be housed on the female tier or in a
5 female building or at a female facility.

6 Q. Does Patuxent Institute for women have administrative
7 segregation and disciplinary segregation?

8 A. No. We have two temporary holding cells. Those are there
9 in case of an emergency that, you know, something happens off
10 hours but if an individual needs to stay on administrative or
11 disciplinary segregation they are transferred back to MCIW.

12 Q. So would you as the Assistant Warden be part of a decision
13 if an inmate did request -- if a transgendered female inmate
14 did request to be housed in a women's area?

15 A. Yes. So I would be part of the conversation and decision
16 but, again, that would be a multidisciplinary team where we
17 have to consider not only Ms. Grey's preferences and what's
18 best for her, but then also any potential threat to any other
19 individual that she may be housed with as well.

20 So we really have to look at operations as a whole and
21 make a decision on what is the best housing location. But
22 that, again, would be a multidisciplinary team approach. And
23 again, Patuxent Institution does not fall under the Division of
24 Corrections, so also especially if we're talking about MCIW,
25 this would likely be a decision that both facilities and the

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1 headquarters staff would be involved in evaluating.

2 Q. would it be possible to transfer a transgendered female
3 inmate to a -- to be celled alone in Patuxent Institute for
4 women?

5 A. So again, our preference is not to cell alone. We try and
6 double-cell whenever possible. We also have designated tiers
7 for program versus nonprogram individuals. We are actually
8 looking at potentially not admitting any other DOC females
9 because it impacts the housing of our statutory programs. I
10 want to say there are two DOC females now.

11 But even if they were housed alone, there would still be a
12 lot of access in the dayroom, in the yard, in the visiting
13 room, et cetera. So housing, whether they're a house alone in
14 a cell or not, we would have to be able to have regular routine
15 and sometimes not directly supervised contact between all
16 individuals housed in PIW.

17 Q. And so you said that Ms. Grey had identified some
18 conflicts with other incarcerated individuals. To your
19 experience would female incarcerated individuals have the same
20 incidence of disagreements with each other?

21 A. If not more, actually. You know, just the women tend to
22 argue more. When that happens and one person can't get along
23 with another and we have to separate them, we transfer one or
24 both to MCIW.

25 Q. And what do you typically do -- well, globally regardless

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1 of gender or gender identity, what do you typically do if an
2 incarcerated individual alleges issues with other inmates or
3 issues with staff?

4 A. So it really is a case-by-case basis. So for example, if
5 we identify that two specific individuals are having problems
6 with each other and are enemies and can't be housed together,
7 we essentially will try and look at who is the most culpable
8 and remove the most culpable person because, of course, you
9 know, we don't want to unnecessarily remove a victim of bad
10 treatment from a program or whatever.

11 However, there are a lot of cases in a correctional
12 setting where an individual is having issues with either a mass
13 group of people or unidentified individuals that we can't then
14 target to be the one who transfers. In that case, that's when
15 the person has to be placed on administrative segregation for
16 their own safety because we can't identify or take action
17 against, you know, the masses. And we try and look at what we
18 can do for that individual that has the least impact, negative
19 impact on them.

20 So for example, if there's an issue unique to Patuxent
21 that an individual is not being successful in general
22 population but I could transfer them to another facility where
23 they're not going to have the same issues and be able to be in
24 general population, that's what we're going to do to limit our
25 use of restrictive housing. We're going to try and find that

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1 facility where they can be successful in general population in
2 the most least restrictive environment possible.

3 I can tell you specifically with Ms. Grey, from her very
4 arrival at Patuxent, any other individual would probably have
5 been placed on involuntary segregation much sooner. I think
6 she signed probably at least five different body waivers and we
7 let her make that decision even though we weren't a hundred
8 percent comfortable with it. She's saying that, you know,
9 these massive amount of inmates are harassing her. We're
10 offering her the protection and she's signing a body waiver
11 saying she wants to stay in general population. At some point,
12 though, we just have to make a decision in her best interest
13 and in the facility's best interest in case there is going to
14 be a security incident.

15 Q. So is it fair to say that based on Ms. Grey's allegations
16 alone you would normally transfer her out and away from
17 Patuxent?

18 A. Yes. So now I'm hearing for the first time through this
19 hearing that her request is maybe she could go be housed at
20 PIW. At this point now she's made multiple complaints that
21 multiple different staff members have physically, sexually, and
22 verbally assaulted and harassed her. I don't understand how
23 you can then ask for a remedy to stay at a facility where you
24 are being physically and sexually abused.

25 The officers that work at Patuxent -- PIW is not a

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1 separate facility, it's just a building. An officer might be
2 working in PIW one day, in school the next, on a male tier the
3 next. Any of the -- I don't have any reason to believe at that
4 point -- she has withdrawn all the IID complaints so they
5 weren't fully investigated, she hasn't given us sufficient
6 details up until this point with the exception of yesterday to
7 finally identifying an actual officer that we can investigate.
8 She hasn't given any specific details.

9 Even yesterday in the testimony, you know, there's no
10 names, there's no dates for us to look into. I don't know who
11 these officers allegedly are. There hasn't been a full,
12 complete investigation because we don't have all the details or
13 the complaints have been withdrawn or they're still pending.
14 Her complaint from the day of the yard incident is still
15 pending to my knowledge. So I can't protect her from certain
16 staff members that she's making these allegations against. I
17 do not believe that we would be doing our duty to continue to
18 house her at Patuxent Institution based on the nature of her
19 claims.

20 Q. And to be clear, the allegations against these officers
21 are allegations and any completed investigations have not found
22 wrongdoing by the Patuxent officers, correct?

23 A. Correct. But what we would normally do in any normal
24 circumstance for any incarcerated individual, IID -- we have --
25 through COVR rights you have up to 90 days to issue

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1 disciplinary action against a correctional officer. IID has a
2 period of time for investigation. When an incarcerated
3 individual makes allegations so serious that officers have
4 pushed them down the steps and sexually assaulted them by
5 grabbing private areas, we don't leave that person in the same
6 facility as their alleged attacker while the time frame for the
7 investigation plays out. The only reason that Ms. Grey is
8 still here right now is because we knew we had an action
9 pending before the Court to restrain us from making any
10 movement on her.

11 Q. And because Ms. Grey asked to remain at Patuxent?

12 A. Correct.

13 Q. And you said that the same officers are employed -- well,
14 Patuxent Institute for Women is not separate so the same
15 officers would be staffing all of the institutions at PIW?

16 A. Correct.

17 MS. RATLIFF: Okay.

18 THE COURT: Ms. Ratliff, I just want to be mindful
19 about the time. I think you indicated that you had a time
20 limitation today.

21 MS. RATLIFF: Yes. I did, Your Honor, and I
22 apologize, I am wrapping up. I think I have one more question,
23 and I appreciate Your Honor's patience.

24 BY MS. RATLIFF:

25 Q. Assistant Warden, are you familiar in your professional

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1 role with the term solitary confinement?

2 A. I am, and it does not exist within DPSCS and definitely
3 not within Patuxent Institution.

4 MS. RATLIFF: Okay. I have no further questions for
5 you at this time, Assistant Warden Stewart. Thank you so much.

6 THE WITNESS: Thanks.

7 THE COURT: Cross-examination, Ms. Golden?

8 CROSS EXAMINATION

9 BY MS. GOLDEN:

10 Q. Thank you. Good morning, Assistant Warden.

11 A. Good morning.

12 Q. Do women at Patuxent, cis women at Patuxent -- Patuxent
13 need a segregation, so why don't you put them in the
14 segregation cells that you used for the cis men?

15 THE CLERK: Excuse me, Ms. Golden. The court
16 reporter's having a hard time hearing you.

17 MS. GOLDEN: I'm sorry. I will speak up. I
18 apologize. Is that better?

19 THE CLERK: Yes. Thank you.

20 THE WITNESS: They're not housing for females.

21 THE COURT: Ms. Golden, could you just repeat the
22 question that you had asked?

23 MS. GOLDEN: Of course, Your Honor.

24 BY MS. GOLDEN:

25 Q. I had asked when cis women at PIW need restrictive

Cross Examination - Kimberly Stewart

1 housing, whether it's administrative or disciplinary
2 segregation, why they aren't housed in a segregation unit that
3 exists for cis men?

4 A. My understanding of DPSCS policy is to house people
5 consistent with their sex assigned at birth, and then with
6 transgendered individuals to consider that on a case-by-case
7 basis. So a sis woman, a woman born female or born a woman at
8 birth would automatically be assigned for housing designated
9 for a female. Any individual identified as a transgendered
10 individual would have to be decided on a case-by-case basis.

11 Q. Okay. And earlier you talked a little bit about soft
12 passes and hard passes. Are soft passes a thing? Do they
13 exist?

14 A. They do. They're not used for religious services or
15 volunteer services, kind of like regularly scheduled
16 activities. They're used for, you know, today my case
17 manager's calling me, today I'm on the sick call list. They're
18 also supposed to be issued from the tier officer to maintain
19 accountability for where all of the individuals assigned to
20 their tier are located.

21 Q. And who is responsible for making sure that staff follows
22 rules?

23 A. The whole chain of command up through the warden, and I
24 note, though, that that is why Ms. Grey did not receive an
25 infraction for being out of bounds because we were not able to

Cross Examination - Kimberly Stewart

1 determine conclusively whether or not a soft pass was issued by
2 staff for her. And of course, if that happened, that
3 responsibility would be on the officer for not following the
4 rules.

5 Q. Are you aware that Ms. Grey requested to be housed with
6 sis women multiple times at WCI?

7 A. I saw that ARP that was submitted to the Court yesterday.
8 That was the first time I had ever heard of that since she has
9 arrived at Patuxent which, again, falls under a different
10 appointing authority and chain of command. There has never
11 been a request to be housed with sis women.

12 Q. You mentioned earlier this morning that you clarified that
13 the segregation officer on the unit, I believe it's Nancy 3
14 we're talking about, that razors are allowed for people who are
15 held on administrative segregation?

16 A. Correct.

17 Q. But you didn't clarify that people on disciplinary
18 segregation are entitled to razors?

19 A. No. I did -- yesterday was the first time I heard that
20 allegation and, of course, this hearing came up very fast. I
21 would have to look into what the policies are on disciplinary
22 segregation to confirm. Off the top of my head, I believe that
23 they are issued them during shower and have to turn them back
24 in and not able to keep them on person, but I can't swear that
25 I am correct on my memory of policy for disciplinary

Cross Examination - Kimberly Stewart

1 segregation.

2 Q. You are the PREA designee, the Warden's PREA designee?

3 A. Correct.

4 Q. So you have training on PREA?

5 A. Correct.

6 Q. Do you know what PREA is generally?

7 A. Correct. It's a set of federal laws designed to keep
8 incarcerated individuals as safe from harm as possible.

9 Q. Okay. Can we pull up Plaintiff's Exhibit 12? This is the
10 PREA regulations. You might have a copy in your office to
11 review?

12 A. Not readily available. I can try and pull them up.

13 Q. All right. We'll pull them up on the screen.

14 THE COURT: Counsel, I think that -- okay, there we
15 go.

16 MS. GOLDEN: Exhibit 12.

17 BY MS. GOLDEN:

18 Q. Do you recognize this document, Assistant Warden?

19 A. I do.

20 Q. What is it?

21 A. The Prison Rape Elimination Act, which is what we refer to
22 as PREA.

23 Q. Okay. Could we flip to Page 20, which is --

24 MS. RATLIFF: Your Honor, I'm going to object as
25 beyond the scope of direct.

Cross Examination - Kimberly Stewart

1 THE COURT: Let me just hear from Ms. Golden.

2 Ms. Golden, can you proffer what you are going to explore
3 here?

4 MS. GOLDEN: Sure. The Assistant Warden has
5 identified herself as the PREA officer or the PREA designee
6 responsible for implementing these regulations.

7 THE COURT: All right. Objection's overruled.

8 BY MS. GOLDEN:

9 Q. Could we turn to Page -- I believe it's Page 20,
10 Subsection 115.42. Are you able to see that, Assistant Warden?
11 I want to make sure this is big enough.

12 A. I am, and I was able to pull it up on my computer as well.

13 Q. Oh, okay. Could you read to us Subsection C of .42 there
14 at the bottom?

15 A. Sure. "In deciding whether to assign a transgender or
16 intersex inmate to a facility for male or female inmates and in
17 making other housing and programming assignments, the agency
18 shall consider on a case-by-case basis whether a placement
19 would ensure that an inmate's health and safety and whether the
20 placement would present management or security problems."

21 Q. Okay. And Subsection E, please.

22 A. "A transgender or intersex inmate's own views with respect
23 to his or her own safety shall be given serious consideration."

24 Q. In your experience, has a transgender inmate ever been
25 assigned to be housed according to their gender identity?

Cross Examination - Kimberly Stewart

1 A. I wouldn't have that knowledge for DPSCS statewide.

2 Q. In your experience at Patuxent.

3 A. I've only been at Patuxent since July of 2022. It has not
4 happened since then. We have also not had a request since
5 then.

6 Q. But to clarify, you've had other transgender incarcerated
7 people?

8 A. Correct, and none have made a request to be housed at PIW
9 or MCIW.

10 Q. Okay. In your experience, have you ever affirmatively
11 asked any of those individuals what their preference is?

12 MS. RATLIFF: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: So that would not be the procedure to
15 ask. We would consider any request by any incarcerated
16 individual for any sort of housing issue.

17 BY MS. GOLDEN:

18 Q. Okay. So your interpretation is that an inmate's own
19 views, or what the department refers to as an incarcerated
20 individual's own views only come into play if that person
21 expresses them to you, you have no obligation to ask?

22 A. More specifically, I would answer that Ms. Grey's views
23 were considered explicitly by me when we had a conversation
24 where she requested to be housed alone on D3, which I granted,
25 and where she has committed multiple ARP complaints asking to

Cross Examination - Kimberly Stewart

1 go back to D3 after her placement on administrative
2 segregation.

3 Q. I understand. That's not exactly what I asked, though.
4 I'm just asking about the regulation and your
5 understanding as the PREA designee that an inmate's own views
6 only come into play if that inmate affirmatively asks?

7 A. We can only consider their own views if they express them
8 to us, correct.

9 Q. And you have no obligation to ask?

10 MS. RATLIFF: Objection. Asked and answered.

11 THE COURT: Sustained.

12 BY MS. GOLDEN:

13 Q. I want to go back to the incident -- I don't have the
14 exact date in my notes -- when Ms. Grey was on the segregation
15 unit and another worker, an inmate janitor or tier worker got
16 out, do you know the incident I'm talking about without the
17 exact date?

18 A. I do. It was reported on 10/17. I don't know the date of
19 the alleged incident.

20 Q. Okay. How could somebody get out of their cell at that
21 time of night?

22 A. We have sanitation workers assigned to clean the common
23 areas of the tier. He didn't get out. He was performing his
24 assigned duties to clean the general areas of the tier.

25 Q. And those duties occurred at 10 o'clock at night?

Cross Examination - Kimberly Stewart

1 A. Some. Sanitation is 24/7 in a facility.

2 Q. Okay.

3 A. I'm sorry, I'm going to say just for the record I would
4 have to pull the reports. I am not aware, personally aware
5 that it's alleged to have occurred at 10 o'clock at night, and
6 the incident also was not fully investigated by IID because of
7 the withdrawal form.

8 Q. If I understood your testimony correctly yesterday and
9 today, IID investigates for possible criminal violations?

10 A. No. IID investigates for both criminal and administrative
11 and is the designated investigative agency for any PREA related
12 complaints, whether they be administrative or criminal.

13 Q. And so if something is referred to IID you don't -- you
14 testified there's some internal investigatory ability inside
15 the facility but that is -- that does not happen if something
16 is referred to IID?

17 A. The capability is very limited. What they're going to be
18 investigating is more kind of institutional operational safety
19 and security matters.

20 Q. You don't need a victim statement, though, to uphold a
21 disciplinary charge, right?

22 A. Oftentimes we have no complaining witness or no witness
23 that can testify to acts occurred, we would not have enough to
24 charge on a disciplinary matter. We would have to have some
25 sort of external evidence in order to charge.

Cross Examination - Kimberly Stewart

1 Q. So you don't always need a victim statement?

2 A. Not in all cases if there is some sort of objective
3 external evidence.

4 Q. And you don't need a victim statement to find for the
5 sexual assault or other PREA allegation was considered
6 substantiated, correct?

7 A. If the victim -- in that case if the victim is telling IID
8 that they're withdrawing the complaint, that is the
9 investigative agency. We're talking about two different
10 things. What the facility would do and what IID is assigned to
11 investigate the case are two different things.

12 In this case, if we have -- we didn't have any other
13 witnesses to this incident. If there were other witnesses that
14 observed an assault from the sanitation worker on Ms. Grey, I
15 would have ordered that those officers write the report based
16 on their own observations.

17 Q. And there are no cameras on the side where Mr. Grey is
18 housed?

19 A. No, there are not.

20 Q. Are there cameras on the other side of the unit?

21 A. No, there are not.

22 Q. Are there any cameras in the tiers of Patuxent generally?

23 MS. RATLIFF: Beyond the scope.

24 THE WITNESS: I will answer if I'm ordered. I would
25 rather not answer that question for safety and security

Cross Examination - Kimberly Stewart

1 reasons.

2 THE COURT: The objection's overruled.

3 THE WITNESS: So I do have to state on the record
4 what the recording capability in the facility is not relevant
5 to this case?

6 BY MS. GOLDEN:

7 Q. I'm just asking generally, I'm not asking for the location
8 of the cameras.

9 A. Unfortunately, due to maintenance issues Patuxent has very
10 limited camera capability. We're a very old facility in 1955.
11 We are scheduled for an upgrade. We do have some recording in
12 some locations, which I would rather not disclose which ones
13 work and don't work because incarcerated individuals just see a
14 camera there. They don't know which ones are working versus
15 not.

16 Q. There are logbooks on the units, right?

17 A. I'm sorry, there are logbooks? I'm sorry.

18 Q. Yes. My understanding is it's a standard practice?

19 A. Yes.

20 Q. And those record who comes into and out of the unit?

21 A. Yes.

22 Q. They record any serious incident?

23 A. That are known, yes.

24 Q. And there's a logbook for recreation, right?

25 A. Yes, there should be.

Cross Examination - Kimberly Stewart

1 Q. I haven't overlooked any logbooks or logs that have been
2 produced as part of the briefing in this hearing, have I?

3 MS. RATLIFF: Objection. I think this is beyond the
4 scope of direct.

5 THE COURT: I think there was some testimony about
6 recreation access and I suspect that that's what Ms. Golden is
7 probing so I'm going to overrule the objection.

8 MS. RATLIFF: Thank you, Your Honor.

9 THE WITNESS: I have not been privy to the Court
10 filings other than the affidavit I signed or information I
11 submitted, so I'm not sure if there have been any logbooks
12 submitted. I did not submit any.

13 BY MS. GOLDEN:

14 Q. Okay. Did you review any before your testimony?

15 A. I was not aware that there was an allegation of not
16 getting recreation, so I did not prepare that to submit. My
17 understanding that this case was about a temporary restraining
18 order from putting her on segregation.

19 Q. I do want to make sure that I'm clear that I am not asking
20 you about any conversations with your attorneys about what this
21 TRO hearing was about.

22 A. Correct. I can just say that I would have no idea that
23 this would be relevant to today's discussion so I never
24 attempted to pull the logbooks or look into the recreation
25 issue.

Cross Examination - Kimberly Stewart

1 Q. There are men at your institution who have been convicted
2 of sexual assault, correct?

3 A. Yes.

4 Q. And there are men at your institution who have been
5 convicted of murdering other men, right?

6 A. Yes.

7 Q. And I -- there are women who have been convicted of
8 murdering other women?

9 A. Yes. I would assume. I don't know of a specific case but
10 I would assume.

11 Q. When Ms. Grey was taken for the PREA exam or the SAFE exam
12 inside the institution on the 10th, were you aware that she was
13 offered an exam by a male nurse?

14 A. That day -- I believe that would have been -- that was a
15 Friday, I believe it was a state holiday so I was not in the
16 facility at the time of. I believed that I read a report
17 after.

18 First of all, my understanding is I'm not sure if there's
19 a physical component to a SAFE exam. I think that it's an
20 educational component that a male nurse may have been offering,
21 but I also read a report that then when she did not want to see
22 the male nurse, a female nurse was offered. That was still
23 declined. But medical took -- undertook the effort for her
24 comfort level to then order the transport to Mercy.

25 MS. GOLDEN: May I ask the Court's indulgence for a

Cross Examination - Kimberly Stewart

1 few minutes to consult with my co-counsel?

2 THE COURT: You may, yes.

3 (Pause in Proceedings.)

4 MS. GOLDEN: Thank you.

5 BY MS. GOLDEN:

6 Q. I'm going to show you Plaintiff's Exhibit 18. Could you
7 pop that one up? Excuse me. A little bit of technical --
8 okay. You testified earlier that Ms. Grey had never complained
9 about a lack of razors.

10 A. Correct, to my knowledge.

11 Q. To your knowledge. Have you seen this document before?

12 A. I was -- again, I got to see if it's in the packet. I was
13 asked for and received a copy of all ARPs that have been filed
14 and I received that about, I don't know, about 15 minutes
15 before the hearing started yesterday. I'm trying to look.
16 What number is that? I'm trying to see if it's in the packet I
17 received shortly before the hearing yesterday.

18 Yes, this ARP is in the packet that I received yesterday
19 that was filed November 4th.

20 Q. You hadn't seen this before yesterday or perhaps right
21 now, but not earlier than that?

22 A. The procedure would be for the ARP coordinator to receive
23 and accept the complaint for investigation. At the completion
24 of the investigation, I would receive a copy of the case
25 summary investigative report in order to issue a decision.

Cross Examination - Kimberly Stewart

1 Since this case was just received on November 6th and assigned
2 for investigation, that 30 days for the investigation, the time
3 frame would not be over to complete.

4 Q. So when you are testifying about ARPs that you have seen
5 separately except for this large packet that you were given,
6 there's a 30-day lag period is what I'm understanding; is that
7 correct?

8 A. For the official investigation, yes. There would not be a
9 necessarily be a 30-day lag period, you know, for example
10 receiving mail. I can -- I don't know if I'm allowed to say
11 what the conversation was with my Captain yesterday, but these
12 complaints can be communicated to any supervisor that would
13 have an immediate ability to fix the issue. And to my
14 knowledge other than filing the ARP, which would go to a, you
15 know, sergeant assigned to investigate ARPs and they have a lag
16 time, there are other informal ways of addressing issues
17 faster.

18 Q. But there is no way generally for a person who's in
19 segregation to informally address it to you unless you happen
20 to be on the tier, right?

21 A. No. I get mail all the time from segregation.

22 Q. There's no lag time for the males in segregation but there
23 is for the ARPs?

24 A. There may be, you know, a matter of days for the mail but
25 it wouldn't be 30 days.

Cross Examination - Kimberly Stewart

1 Q. And I want to clarify a few other things and I'll be
2 quick. I'm sorry, could we close the exhibit? Thank you.

3 Ms. Grey was found not guilty of the threatening charge,
4 correct?

5 A. That was one charge in one notice of rule violation. She
6 was found guilty of other Category 1 violations related to both
7 incidents.

8 Q. I understand that. But the threatening she was found not
9 guilty?

10 A. Correct.

11 Q. And I want to understand your testimony about the 9th of
12 November. That was the yard incident --

13 A. Okay.

14 Q. -- Ms. Grey received a charge for. According to the
15 charges, it happened at 10 a.m.?

16 A. Yes, I believe approximately 10 a.m.

17 Q. Okay. And a number you of you gathered to observe,
18 Ms. Grey was cuffed, transported, strip searched, dressed,
19 recuffed and transported to an attorney visit?

20 A. So there's no, like, transport, you know, of a significant
21 time.

22 Q. Why --

23 A. I would say an average strip search takes less than five
24 minutes.

25 Q. But all that -- I have the order correct?

Cross Examination - Kimberly Stewart

1 A. She -- I know that she was removed from the yard and strip
2 searched. I believe she might have walked upstairs to the
3 medical area first. I don't know that for sure before she went
4 to an attorney visit.

5 Q. And that attorney visit started at 10:20?

6 A. I don't know where the 10:20 date -- time frame came from.
7 I know that the attorney, according to the logbook at the
8 front, entered the facility at 10 a.m., there is more of a
9 delay for processing, identification, waiting on an escort
10 officer, and that they -- the attorney I believe left, and I
11 just checked this verbally with the officer working out front
12 yesterday, at 11:35.

13 Q. Okay. I also want to confirm, your video seems to be
14 frozen but you can hear us okay?

15 A. I can.

16 Q. Okay. No strip search of Ms. Grey has ever produced any
17 contraband, correct?

18 A. Not to my knowledge.

19 Q. Have you seen the pictures that Mercy Hospital took of
20 Ms. Grey's right breast?

21 A. No.

22 Q. Have you been informed what those pictures show?

23 A. I was not informed what the pictures show. I received a
24 report from Mercy that I -- first of all, there was at least a
25 24-hour delay, a day delay in reporting the incident, but Mercy

Cross Examination - Kimberly Stewart

1 sent me a notice that said that they were giving us notice
2 about this incident because Ms. Grey made the allegation that
3 the facility was stopping her access to her attorneys or
4 police, which I know to be a false statement because she had an
5 attorney visit the day before, and every incident that I'm
6 aware of that would fall under IID's jurisdiction I have
7 ordered a complete and thorough investigation and we had
8 reported that PREA incident the day before despite the fact
9 that the verbal complaints do not actually meet the standards
10 for making a PREA complaint.

11 Q. What I asked, though, is that had you been informed of
12 what those pictures show?

13 A. No.

14 MS. GOLDEN: Court's indulgence, please.

15 BY MS. GOLDEN:

16 Q. Would the results of her SANE investigation and what the
17 pictures show be of interest to the facility?

18 A. It would be the -- the results of that would go to the
19 assigned IID investigator. The assigned IID investigator would
20 evaluate all of the evidence and creates findings of fact.

21 Based on those findings of fact, they would make a
22 recommendation into whether or not there were any charges under
23 the standards of conduct for any state employee. They would
24 also make a recommendation, I believe, on a level of sanctions
25 and then it would be up to the appointing authority or designee

Cross Examination - Kimberly Stewart

1 to based on their findings of fact order appropriate
2 disciplinary action, if any, based on those findings of fact.
3 So it would be of interest to me from the completed
4 investigative report from IID.

5 Q. And if I understood your earlier testimony, that takes a
6 number of weeks?

7 A. It can, which is why we would normally take immediate
8 action to remove the alleged victim from access from the
9 attackers.

10 Q. But you didn't do that here?

11 A. We were asked not to because of this case being filed. It
12 was my understanding that there is an action before the Court
13 pending for a restraining order from removing her from Patuxent
14 and asking that she be returned to general population in
15 Patuxent. We didn't want to skirt the Court's authority before
16 this hearing is held. We are waiting until the results of this
17 hearing before we take action because, again, the PREA
18 standards, it requires us to consider her wishes. Ms. Grey's
19 wishes are that she remain here at Patuxent.

20 Q. And the officer, the accused officer is still working on
21 Ms. Grey's tier?

22 A. I am not sure the identities of the accused officers from
23 that case.

24 MS. GOLDEN: No further questions.

25 THE COURT: Thank you. Ms. Ratliff, do you have any

Cross Examination - Kimberly Stewart

1 redirect?

2 MS. RATLIFF: I do not, Your Honor. Thank you so
3 much.

4 THE COURT: All right. Thank you. Thank you,
5 Ms. Stewart. I believe that our plan was to go back to the
6 plaintiff's side and present any additional witnesses that they
7 may have. Ms. Golden or Ms. Weber?

8 MS. GOLDEN: Yes. We --

9 THE COURT: But I think we've been going for a little
10 bit more than an hour and a half at this point so I think we'll
11 need to give a break to our court reporter. So let's take a
12 10-minute break at this point and if anyone needs to use the
13 restroom, they have the ability to do that. We'll come back at
14 10:50. Ms. Grey looks like she has a question.

15 MS. GREY: If I could just ask to speak to my
16 attorneys very briefly like one or two minutes, I would
17 appreciate that indulgence if it's possible.

18 THE COURT: Ms. Moye, can you set up a breakout room
19 for Ms. Grey and her counsel?

20 THE CLERK: Yes.

21 THE COURT: Then counsel please hit the "ask for
22 help" button when you're ready to come back out of the breakout
23 room. We'll resume at -- I'm sorry -- 10:50.

24 MS. GREY: Thank you, Your Honor.

25 THE COURT: Yes.

Direct Examination - Dan Pacholke

1 (A recess was taken from 10:39 a.m. to 10:50 a.m.)

2 THE COURT: All right. Ms. Golden?

3 MS. GOLDEN: I'm sorry, it looks like Ms. Grey is not
4 back yet.

5 THE COURT: All right. I mean, we can give her some
6 time or I guess we could move on to the next witness unless
7 there's something that she needs to be present for.

8 MS. GOLDEN: No, we could. At this time we call Dan
9 Pacholke.

10 (Dan Pacholke was duly sworn.)

11 THE CLERK: Please state and spell your full name for
12 the record, please.

13 THE WITNESS: My name is Dan, D-a-n, last name
14 Pacholke, P-a-c-h-o-l-k-e.

15 THE CLERK: Thank you.

16 THE COURT: Ms. Golden, your witness.

17 MS. GOLDEN: Thank you.

18 DIRECT EXAMINATION

19 BY MS. GOLDEN:

20 Q. Mr. Pacholke, what's your current employment?

21 A. I work for Dan Pacholke Consulting. I do corrections work
22 around the country.

23 Q. I am going to call up Plaintiff's Exhibit 5. Do you
24 recognize this document?

25 A. I do. Looks my like my resumé, CV.

Direct Examination - Dan Pacholke

1 Q. Okay. Understanding that we are running short on time,
2 could you briefly summarize your career?

3 A. Well, I worked for the Washington State Department of
4 Corrections for 33 years, four months. Started as a
5 correctional officer. I retired as the head of the agency. I
6 was there briefly. I was superintendant of three different
7 prisons. I was deputy director in prison, director of prisons,
8 deputy secretary, and I worked all ranks from officer,
9 sergeant, lieutenant, and captain, six different prisons.

10 During my time with the department, I also did work for
11 the National Institute of Corrections doing training around the
12 country and also did work for Defense Technology Corporation.

13 When I retired, I went to work for New York University.
14 We're doing some innovative practices around prison and jail
15 operations, and since about 2018, I've primarily done
16 independent consulting work in the field of corrections,
17 published a number of articles related to the field, done work
18 both in the country and out of the country as well.

19 Q. Okay. Thank you. Going down to some of your
20 publications, I'd like to talk about them. Specifically the
21 third one down, can you tell us what that one was and describe
22 it for us?

23 A. Yeah. It would be, the policy brief itself was called
24 More Than Emptying Beds: A Systems Approach To Segregation
25 Reform published in about 2016.

Direct Examination - Dan Pacholke

1 We, Washington State had done a lot of work on segregation
2 reform from the '90s all the way up through when I left in 2016
3 and kind of had a system around how you do that. So we were
4 asked to author a policy brief which we did for DOJ and BJA
5 around how you reform the use of segregation.

6 Q. And BJA is the Bureau of Justice Assistance for the US
7 Department of Justice?

8 A. Yes, ma'am.

9 Q. And I'll ask you if it's correct that in the forward, the
10 director of BJA noted that this paper formed the basis of
11 President Obama's announcement and principles about segregated
12 housing?

13 A. Yes, ma'am.

14 Q. Have you dealt -- have you had other professional
15 experience dealing with solitary confinement?

16 A. I have. I mean, I have served as an expert both in doing
17 investigations for DOJ, the Department of Justice Civil Rights
18 Division, and for a number of different law firms in looking at
19 segregation either from class action lawsuits or individual
20 lawsuits or, as an example, for DOJ through CRIPA
21 investigations.

22 Q. Okay. Have you been qualified as an expert before in
23 solitary confinement?

24 A. Yes, ma'am.

25 Q. Do you have a rough guess as to how many cases that's

Direct Examination - Dan Pacholke

1 happened?

2 A. I'm not exactly sure. I know I've testified 16, 17, 18
3 times, maybe, in deposition or courtroom. Probably worked 40
4 cases, maybe.

5 Q. Could we pull up Exhibit 6, Plaintiff's Exhibit 6. Do you
6 recognize this document?

7 A. I do.

8 Q. And what is this?

9 A. It's just supplemental information I usually provide that
10 shows the rate in which I'm compensated and the cases in which
11 I have either given a deposition or courtroom testimony.

12 Q. And that rate's still accurate? That's what we're paying
13 you today, right?

14 A. Yes.

15 Q. And can we just scroll down? I'd just like you to tell me
16 if this was accurate for the number of cases.

17 A. Yes.

18 Q. Okay. Thank you. And we can close that.

19 In your professional experience, have you dealt with
20 transgender prisoners?

21 A. I have.

22 Q. Can you describe that experience?

23 A. Well, I've probably done at least four cases in two
24 states, in Illinois and Arizona specifically, independent and
25 separate from Washington State and have looked at transgender

Direct Examination - Dan Pacholke

1 housing issues in, you know, another few jurisdictions. So,
2 you know, oftentimes there's an intersection between
3 transgender and segregation transgender and some form of
4 retaliation or abusive environments, so it seems like it all
5 interacts with segregation at some point and mental health.

6 Q. And in your career with the Washington Department of
7 Corrections, did you deal with transgender prisoners?

8 A. I did.

9 Q. Can you describe that a little bit?

10 A. Well, I think we received our first PREA grant, I think it
11 was called something different in about 2002, and so very early
12 on, way before it was ever published and began to look at the
13 issue of safety in general for vulnerable populations. Part of
14 that is documented in the policy brief on More Than Emptying
15 Beds. It's how do you manage potential victims in a safe way.

16 Q. And you mentioned PREA. So you've had professional
17 experience dealing with PREA?

18 A. Yes.

19 Q. And that was both in your employment with Washington DOC
20 and since then?

21 A. Yes.

22 Q. Okay. Can you describe that a little bit?

23 A. Well, within Washington DOC, I think I was a deputy
24 director when the final law was passed. I served as the
25 executive sponsor that was charged with implementation within

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1 the prison system and work release and community corrections,
2 so that's kind of my official department involvement.

3 Certainly with -- I think I -- like I said, I've worked at
4 least I think four transgender cases involving at least two
5 states and reviewed units in at least two more, so, you know,
6 you have to reference PREA, you have to have some basic
7 understanding of it how the system works as you look at those
8 cases.

9 Q. And have you dealt with prison discipline programs before
10 in your professional experience?

11 A. I have.

12 Q. Could you describe that a little bit?

13 A. Well, as a lieutenant, probably in the late '80s I was a
14 hearings officer, and then as a superintendant we managed
15 discipline for the facility to include having I guess the final
16 intervention when it came to appeals and then certainly as a
17 deputy director and director in prison, we would do performance
18 reviews on disciplinary issues both within facilities and on a
19 statewide aggregated basis.

20 Q. Are there generally accepted professional standards for
21 doing prison disciplinary systems in the corrections
22 profession?

23 A. There are.

24 Q. At this time we'd like to offer Mr. Pacholke as an expert
25 in corrections, solitary confinement, the management of

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1 transgender prisoners, PREA, and his professional standards of
2 disciplinary processes.

3 THE COURT: Do you wish to be heard?

4 MS. DONOHO: No objection.

5 THE COURT: okay. The request will be granted.

6 MS. GOLDEN: Thank you.

7 BY MS. GOLDEN:

8 Q. what did you prepare for today?

9 A. I have read documents concerning the case at hand and I
10 have looked at some of the I guess restraining orders and just
11 different exhibits. I listened in part of yesterday and part
12 of this morning on the deliberations in court so far.

13 Q. Can you tell us what the accepted correctional definition
14 of solitary confinement is?

15 A. well, I mean, solitary confinement really is about
16 totality of conditions. I mean, the characteristics of it are
17 oftentimes you're in a single cell. when you leave the cell,
18 you're in restraints. when it comes to basic things like
19 toilet paper or toothpaste or medication or access to forms,
20 these are things that come to cellfront to include meals and
21 typically that would also include eating in the cell alone.

22 so I think the characteristics of -- it's like a single
23 cell environment, most everything is delivered to the
24 cellfront, all movement is in restraints and typically they are
25 recreated alone.

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1 Q. Whether or not something is considered solitary depends on
2 the nature of the cell door?

3 A. No, not necessarily. You would have to look at the
4 conditions in total, not just the makeup of the cell door.

5 Q. Okay. And generally, what does the evidence show about
6 the effects of solitary confinement?

7 A. I mean, based on my own experience and certainly looking
8 at the research for a very long period of time, you know,
9 physical harm occurs or physical deterioration can occur almost
10 immediately, within a day or so, and the likelihood of having
11 impact to your mental health and your mental wellbeing are
12 pretty dramatic and come pretty quick.

13 Q. And what can be the outcome from those impacts?

14 A. It's deterioration of people, whether it's physically
15 and/or mentally, which can result in different types of
16 behavior that can result in additional violations. So
17 essentially the conditions itself can drive people to
18 deteriorate which can cause other types of abnormal behavior.
19 I mean, there's types of misconduct that occur that only occur
20 in these type of units, they just don't occur in general
21 population, as a byproduct of just being isolated for so long.

22 Q. What kind of behavior is that?

23 A. Well, I guess the example would be, you know, suicide,
24 self-harm would be a good example that, you know, almost
25 exclusively these types of behaviors happen in solitary

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1 confinement units or units where -- I use the word solitary
2 confinement. It could be other type of units that demonstrate
3 that same type of characteristics. It could be the throwing of
4 water, it could be throwing the urine, it could be manipulation
5 of feces, it could even be exposure in the sense of
6 inappropriate exposure. But these are the types of things that
7 I just listed that just don't occur in general population. I
8 mean, they just don't happen. And if they do, they're at such
9 a low base rate it's almost exclusively in these units where
10 people are held in isolation.

11 MS. RATLIFF: Your Honor, I apologize for
12 interrupting. It's come to my attention that Ms. Grey has made
13 an allegation or some comments about the case manager who is
14 currently sitting with her, I believe.

15 THE WITNESS: No. That's not true, Your Honor. What
16 I --

17 THE COURT: Hold on. Let me just hear from
18 Ms. Ratliff.

19 MS. RATLIFF: So I just wanted to bring it to the
20 court's attention because the institution has asked if we could
21 briefly pause so we could switch out staff and start an
22 investigation and put it on the record.

23 MS. GREY: Oh.

24 THE COURT: All right. We'll take a five-minute
25 break.

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1 MS. RATLIFF: Thank you, Your Honor.

2 THE COURT: Let's complete the question and the
3 answer first. I apologize, Ms. Golden.

4 MS. RATLIFF: Certainly, and I apologize.

5 MS. GOLDEN: Your Honor, could we briefly be put into
6 a breakout room with Ms. Grey?

7 THE COURT: Yes. I mean, Mr. Pacholke, did you
8 complete the answer to your last question?

9 MS. GOLDEN: Oh, I'm sorry.

10 THE WITNESS: I believe so. I believe I did.

11 THE COURT: All right. Very good.

12 MS. RATLIFF: I tried to wait, Your Honor. But yes,
13 thank you.

14 THE COURT: All right. We'll take a five-minute
15 break. If you could set up a breakout session with Ms. Grey
16 and her counsel, please.

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Thank you.

19 (A recess was taken from 11:05 a.m. to 11:09 a.m.)

20 THE COURT: Thank you, Ms. Moye.

21 Ms. Ratliff, has the facility had an opportunity -- I see
22 Ms. Grey here, but has the facility had an opportunity to do
23 what it needs to do?

24 MS. RATLIFF: I believe so, Your Honor. I spoke to
25 Assistant Warden very briefly. She then received a call that

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1 she said it's -- it indicated to me that it was taken care of.

2 THE COURT: Okay. We can resume, then.

3 MS. RATLIFF: Thank you, Your Honor.

4 THE COURT: Ms. Golden?

5 BY MS. GOLDEN:

6 Q. Okay. Mr. Pacholke, you mentioned that you had experience
7 as a corrections professional working with transgender
8 prisoners.

9 A. Yes.

10 Q. Can you -- are transgender women ever housed in women's
11 facilities?

12 A. Yes.

13 Q. Can you tell us about how common that is?

14 A. Well, certainly in Washington State, where I live, anyhow,
15 you know, there are trans women inside the women's facility.
16 Another state, Illinois has a relatively significant amount of
17 trans women inside their women's facility. Massachusetts,
18 their 2018 bill, Crime Bill that also impacted corrections
19 gives choice to trans women as far as where they're housed.

20 And I've certainly even seen specialized units. Florida
21 is one of them that have units where a person could volunteer
22 and go to a trans unit. It was in a male facility but there
23 were all trans women. You know, certainly worked with the
24 issue in Arizona and have followed the issue in both California
25 and New York, so there's a number of states that have moved in

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1 that direction I would say, you know, since the PREA law has
2 been passed, and it's becoming more common.

3 Q. You just mentioned the PREA law. Is that because of the
4 PREA?

5 A. I believe that's part of it, yes.

6 Q. Could you explain that a little bit more?

7 A. Well, part of it is, for my own perspective and my own
8 background, it really is looking for safe places to put people
9 where they can do their incarceration free of abuse or physical
10 harm.

11 Independent and at the same time, PREA is probably the
12 most substantial, probably the only federal regulations out
13 there on how prisons operate and it does put into place some
14 mechanisms or rules, not unlike asking people what their
15 preference for housing is upon intake when they're trans.

16 Some form of sexual safety along with some preference
17 around housing, some trans women want to be in a women's
18 facility and some don't, but that's all part of what's taken
19 into consideration. I think all this came after the PREA law
20 was put into effect.

21 Q. So your understanding is that under PREA, you need to
22 affirmatively ask somebody where they want to be housed?

23 A. I don't know else you get the information but, yes, my
24 experience has been that people are typically asked.

25 Q. And how does it generally work out when trans women are

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1 housed in a female facility?

2 A. Well, I think that people that manage those facilities
3 would tell you the biggest struggle right off the bat will be
4 more so the staff than the offender population, that there is
5 some education that needs to occur around the impacts of, you
6 know, medications and hormone therapy over time and around, you
7 know, gender-affirming treatment and that sort of thing, but
8 oftentimes it's you've got a fairly big hill to climb with
9 staff and it takes a warden or superintendant that is committed
10 to standing behind that.

11 Other than that, I think, you know, women's facilities are
12 drastically different than male facilities. I mean, the
13 problems often are, you know, relationship issues, mental
14 health issues, medical issues, much more so than there are like
15 fights, gangs, and violence which you see more out of men. But
16 the benefit of it is because the environment is situated around
17 a female gender, whether it's in the programs they offer or how
18 the staff interact with them or how the incarcerated display
19 themselves on the unit, it seems like it's a good fit, that it
20 works.

21 Q. Going back to the specifics of this matter, you said you
22 listened to some of the testimony yesterday and that you had to
23 log off and some this morning.

24 Did you hear the testimony that the defendants considered
25 the fact that Ms. Grey killed two women as a reason to evaluate

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1 whether she should be housed in a men's or a women's facility?

2 A. The challenge there is, you know, oftentimes women, their
3 pathway to prisons is very different than men. Oftentimes it's
4 evolved around relationship issues of one sort or another, so
5 it's not uncommon to have a lot of women in for violent crimes
6 within the context of relationships.

7 So you know, in my experience anyhow, the last five, six,
8 seven years or so, I mean, the number of violent offenders in
9 prison has only risen more as prisons have began to downsize,
10 so I don't know how you would consider that. I mean, there
11 are, you know, people in prison for all kinds of different
12 violent crimes that impact both their own gender and opposite
13 genders as well.

14 (Audio gap.)

15 THE CLERK: Ms. Golden, we can't hear you.

16 MS. GOLDEN: -- romantic partner?

17 THE WITNESS: I would say that is incompetent and
18 negligent and certainly in contrast to federal law.

19 THE CLERK: Ms. Golden, the court reporter didn't
20 hear your last question.

21 MS. GOLDEN: I'm sorry. I will --

22 BY MS. GOLDEN:

23 Q. I believe what I said is, from the perspective of a
24 corrections professional who is concerned with safety of both
25 staff and inmate, is it proper to house someone or cell someone

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1 with a romantic or sexual partner?

2 Could you just repeat your answer for the record?

3 THE WITNESS: I mean, that would be both negligent,
4 incompetent, and certainly inconsistent with the PREA laws.

5 BY MS. GOLDEN:

6 Q. what kind of problems would result?

7 A. well, one, to a certain degree you're sanctioning sexual
8 activity which, you know, institutions prohibit. You're
9 creating an intimate relationship which could wind up in
10 conflict with the partner against other people they perceive as
11 harassing or intimidating or even flirting to a certain degree.
12 It just creates, you know, additional problems that you don't
13 need.

14 Q. what does it suggest to you as a correctional expert that
15 the department housed Ms. Grey with her partner at WCI?

16 MS. DONOHO: Your Honor, objection. WCI is not on
17 trial here. It's about her conditions at Patuxent.

18 THE COURT: Yeah, it's hard for me to see the
19 relevance for purposes of this hearing and the request for
20 injunctive relief at this stage given that she's housed at
21 Patuxent.

22 Ms. Golden, do you want to be heard on that?

23 MS. GOLDEN: No. I'll move on.

24 THE COURT: Okay. Objection's sustained.

25 BY MS. GOLDEN:

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1 Q. As a corrections professional, can you talk about how --
2 what the standard is for using confidential informants in
3 prison and how that is to be evaluated?

4 A. Well, typically with confidential informants, there's some
5 scoring routine where it would be a form or a document or some
6 way to establish that there is credibility and reliability with
7 a person that's providing that information. Typically, it's
8 used in conjunction with other information or evidence that you
9 might have. If there were, you know, multiple offenders on the
10 scene, how many did you interview, what was their consistency
11 of the information with a confidential informant. But
12 typically with a CI there's some way to grade them to say that
13 they're credible and reliable.

14 Q. And were you present for the testimony about Ms. Grey's
15 removal to ad seg based on the testimony of a charge of a
16 confidential informant?

17 A. I was.

18 Q. What does it say to you that the charge was thrown out but
19 Ms. Grey was continued to be held in segregation?

20 A. Well, it said that they didn't have enough information to
21 sustain a guilty verdict in a disciplinary hearing, a due
22 process hearing, and I guess in followup to that, they decided
23 they would keep her on administrative segregation, which is a
24 way to continue to maintain her in Ad-Seg without necessarily a
25 due process hearing.

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1 Q. I'd also like to talk about the incident that I think you
2 heard discussed where there was another inmate, an inmate
3 janitor who was out on the tier who exposed himself to
4 Ms. Grey.

5 A. Yes.

6 Q. Does it make sense from a correctional professional
7 standpoint that no one was charged with a rule violation?

8 A. No. It doesn't make sense that the issue was not
9 investigated and that nobody was charged with a rule violation,
10 but as significant to me is the fact that someone was allowed
11 on that tier at 10 o'clock at night which appears to be without
12 any supervision at all in what is described as an open barred
13 front situation.

14 So if you have a person that you know is vulnerable and if
15 you have a person that you know has had some complaints and
16 issues with being harassed, whether it's being called names or
17 having her bra stolen or whatever the case may be, why would
18 you put them in a unit without video surveillance and in the
19 middle of the night let out a janitor with no supervision.

20 I mean, it seems contrary to all their other practices
21 around handcuffing all movement and strip searching and the
22 restrictions on different property items and stuff they may
23 have, so it just feels incongruent. Why would you not
24 investigate it and then more importantly, why was she there,
25 why was the janitor there at 10 o'clock at night with no

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1 supervision and no video surveillance.

2 MS. DONOHO: Your Honor, I would object and ask that
3 answer be stricken for speculation. He doesn't know any of the
4 actual background and has been going off of speculation and it
5 also misconstrued the prior testimony of AW Stewart.

6 THE COURT: The objection's overruled.

7 BY MS. GOLDEN:

8 Q. Is it standard or accepted correctional practice to
9 acceptable to tell an inmate if she doesn't -- that she won't
10 be charged for throwing water if she drops the charges against
11 another inmate for throwing water?

12 A. No. That sounds very informal and outside the rules.

13 Q. And in your experience just generally, why would any
14 inmate not want to pursue criminal charges?

15 A. well, there can be a variety of reasons, but Ms. Grey
16 presents as a slight build -- she presents as a woman, slight
17 build, not very tall, not much body weight who's serving a
18 very, very long sentence. So part of it could be just doesn't
19 want to be labeled a snitch and doesn't want to spend her
20 entire sentence in segregation.

21 Part of it could be that someone either relayed
22 information, hey, you better not follow through on that. But I
23 think a lot of it can tie back to how they're viewed by the
24 general population of the prison system when they're facing
25 very long sentences and, at least in her case, it appears to be

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1 a person that would struggle to physically defend herself.

2 Q. Can you say a little bit more about what it means to be
3 marked as a snitch?

4 A. Well, it really depends on where you're at, I suppose, in
5 which state that you're residing in, but overall, you know,
6 there's a rule, they're not supposed to tell on each other and
7 to a certain degree there is an inmate code around that and
8 sanctions can be placed against you by either the person that
9 you informed on, or perhaps their colleagues or friends or
10 perhaps just someone that wants to make a name for themselves
11 by saying, hey, I heard you're a snitch, I don't want you on my
12 unit. I mean, those things are real.

13 Q. When you say there's a rule and sanctions, a prison --
14 official prison rule?

15 A. It's more inmate culture, I would say, around informing in
16 general.

17 Q. And does that same cultural taboo apply to disciplinary
18 charges?

19 A. Can you please repeat that?

20 Q. Sure. Does that same taboo about snitching apply not just
21 to criminal charges but internal disciplinary charges?

22 A. Yes.

23 Q. Okay. I'd like to talk about the incident I think you've
24 heard described that Ms. Grey was charged with a disciplinary
25 violation for in the yard.

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1 A. Yes.

2 Q. Do you hear that testimony?

3 A. I do.

4 Q. Okay. Could you talk to us a little bit about as a
5 corrections professional how you analyze that sort of
6 allegation?

7 A. Well, I mean, it seems strange that people from a distance
8 away through office windows would be able to hear that level of
9 conversation, and certainly the deputy warden that spoke
10 earlier described it in great detail around how this, you know,
11 activity from this recreation yard to these other cells was
12 kind of portrayed. So on the one hand, there's that, there's
13 just -- you know, it's kind of funny how staff happened to be
14 close enough to be able to listen to these things in the way in
15 which they did. The timing of it it's kind of peculiar and
16 doesn't seem like there was much follow up.

17 Q. What do you mean by not much follow up?

18 A. I don't know what more was done to substantiate that
19 allegation but it does seem kind of bizarre that someone would
20 be in a recreation yard by themselves and administrative staff
21 that are a ways away from this event in their offices would be
22 able to pay that much attention and get that level of detail
23 concerning what someone might be saying from a segregation yard
24 if, in fact, they could hear it at all.

25 Q. Is any of that affected by the fact there was an officer

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1 on the yard?

2 A. Well, if there's an officer on the yard, which there was,
3 I'm sure, but you would think at the first sign of misconduct
4 that they would intervene, right, that they would have removed
5 the person from the yard rather than let it carry on, I
6 suppose.

7 Q. And I think you also were online to hear the conversation
8 about the disciplinary charge about the texting through a third
9 party.

10 A. Yes.

11 Q. Can you describe to us how you view that as a corrections
12 professional?

13 A. Well, I mean, this is without seeing the substance of the
14 text messages, but information gets relayed. I mean, whether
15 it's through a common phone number and people having
16 discussions and wanting someone that they, you know, want to
17 communicate with, whether it be a family member or someone
18 where there's more of a friendship or romantic relationship. I
19 mean, they're going to do it through paper-based mail, they're
20 going to do it over the phone, they're going to do it through
21 text messaging, any number of ways that they can. The question
22 is what is the quality of that communication, but it occurs. I
23 mean, it goes on. I mean, most of the rules center on, you
24 know, third-party telephone calls. I guess there's an
25 application for text messaging. But it, once again, would

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1 depend on what the messages were because people do want to
2 relay information.

3 Q. The last incident I want to talk about I think relative to
4 the testimony about Ms. Grey's allegations of being assaulted
5 by a CO in the stairwell on the way to the rec yard. Did you
6 hear that testimony earlier? Do I need to summarize it?

7 A. No. No, no, I heard it. Yes.

8 Q. Okay. From your experience, would that be considered a
9 serious incident?

10 A. It's a very serious incident.

11 Q. And what would be the accepted professional response to
12 that sort of allegation?

13 A. Well, I guess first off is I would expect the chain of
14 command to include the warden in the facility, deputy wardens,
15 to understand what happened immediately at that hospital and to
16 see the reports and to see the photos, because they are kind of
17 shocking.

18 And then based on that, you know, you need to take some
19 sort of administrative action, whether it be assigning the
20 staff members involved to home, pending investigation, whether
21 it be, you know, moving Ms. Grey as well, perhaps to the female
22 unit or somewhere other than where she is at today, but it's a
23 very serious charge and certainly the photos reflect that.

24 Q. Are there -- are those things that would make sense to do
25 after reviewing that photographic evidence?

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1 A. Yes. Yes. I mean, you would want to take very quick
2 decisive actions when you get that kind of report from an
3 outside hospital.

4 Q. And in your professional opinion, where's -- what kind of
5 living situation is Ms. Grey least likely to be a target for
6 abuse?

7 A. Probably in a women's facility.

8 Q. Has all of your testimony here been to a reasonable degree
9 of professional certainty?

10 A. Yes.

11 MS. GOLDEN: Thank you. No further questions.

12 THE COURT: All right. Let me ask Ms. Ratliff and
13 Ms. Donoho, I believe you indicated you were looking to end
14 around this time. Do you want to -- let me just check in with
15 you about that, whether that's still the case or not.

16 MS. Donoho?

17 MS. DONOHO: Thank you, Your Honor. I appreciate
18 that. I know it's 11:30, but just given, you know, his
19 availability and we're all here and you just heard the
20 testimony, I'm going to leave my cross be very short and I
21 think we could at least finish with this witness.

22 THE COURT: All right. Thank you.

23 CROSS EXAMINATION

24 BY MS. DONOHO:

25 Q. Good morning. Excuse me. So I believe you said the

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1 solitary confinement, the totality of conditions should really
2 be taken into account. So have you looked at the conditions at
3 Patuxent?

4 A. I've looked at some of the -- I guess the plaintiff's
5 deposition or interrogatory but, no, I have not looked at the
6 conditions.

7 Q. Have you evaluated any correctional facility in Maryland?

8 A. No.

9 Q. When you mention that, you know, transgender inmates they
10 can choose their housing, at least they, you know, can state
11 their preference to their housing that they want to be in the
12 women's or male's facility. The facility should still conduct
13 a case-by-case analysis; is that right?

14 A. Yes. I believe that's what typically occurs.

15 Q. And in a case-by-case analysis, there are other
16 considerations other than the incarcerated individual's
17 preference, correct?

18 A. Yes.

19 Q. And are some of those considerations operational
20 considerations, safety considerations, things of that nature?

21 A. I think safety would be, you know, very high on that list.

22 Q. And you mentioned that Florida has a trans unit. Is there
23 anything that's actually a violation of PREA of housing
24 transgender inmates by themselves?

25 A. You can't force them into some sort of segregated unit

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1 where you can't mandate that they all go to a certain unit, no.

2 Q. And are you aware that the plaintiff has not been deposed
3 or filled out any interrogatories in this case yet?

4 A. I read something that looked like an interrogatory and,
5 no, I'm not aware of that.

6 Q. And for administrative segregation, do you need to go
7 through a due process hearing before, you know, a facility can
8 assign an incarcerated individual to an administrative
9 segregation?

10 A. I would say no, but administrative segregation is reserved
11 for people that have some demonstrated threat of harm to self
12 or others or to the orderly operation of the facility. So to
13 the degree in which you can tie it represents a significant
14 risk of harm to self or others or the orderly operation of the
15 institutions, that would be a qualifier to go on administrative
16 segregation.

17 Q. And so it's correct that there's a multitude of reasons
18 why a certain incarcerated individual would be assigned to
19 administrative segregation?

20 A. There can be, but they fall under those two kind of
21 umbrella statements I've just made about, you know, some risk
22 of harm or significant risk to the order of operation of the
23 facility.

24 Q. And if there was a credible report from a reliable CI
25 about a threat to an incarcerated individual's safety, would

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1 that suffice?

2 A. Perhaps. I mean, I would be curious to know what the
3 other evidence was and would not necessarily place someone on
4 administrative segregation because one person said they
5 represented a threat.

6 Q. So you mentioned that the communications between
7 incarcerated individuals are more important than just the fact
8 that they are having communications. Is it fair to say that
9 individuals having conversations that are sexual in nature,
10 that that would be problematic?

11 A. Well, I suppose it could be.

12 Q. Because didn't you earlier in your testimony say that
13 housing inmates together who have a sexual relationship that
14 that's improper?

15 A. That is improper.

16 Q. Right. So if they were having communications that were
17 sexual in nature, would that not also be improper?

18 A. It could be, I mean, but those conversations go on. I
19 mean, they go on between men and women, you know, their family
20 on the outside, they go in the visit room, they go on in
21 housing units. So I guess I would have to know more about that
22 because those kind of conversations do occur.

23 Q. Well, I guess I mean conversations between inmates, so an
24 inmate is talking to another inmate and those conversations are
25 sexual. Not that they're having --

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1 A. I would probably just need more context. I mean, it could
2 be problematic and it could be humor in some ways. I mean,
3 prison has its own set of that, too. It's very different than
4 the outside world.

5 Q. But would it be fair if the communications were in the
6 sense soliciting sex acts of that nature, would that be
7 problematic?

8 A. It could be. Once again, I mean, it's hard for me to draw
9 a hard line like that without knowing more.

10 Q. So going back to your testimony about the recreation yard,
11 there were corrections officers on the yard so there was
12 supervision conducted there. How is that odd that they would
13 be able to see what was going on?

14 A. It's just a level of detail that I suppose the Assistant
15 warden -- she seemed to know in tremendous -- in a tremendous
16 level of detail and in contrast to that knew little to nothing
17 about the person being evaluated by Mercy Hospital, so that to
18 me was odd.

19 Q. Would it not be odd if, as you testified, that she
20 personally saw the acts that were happening in the yard?

21 A. Well, one, I think it is odd that a deputy warden and a
22 lieutenant and others would have that kind of time at the
23 window. Second to that, if the behavior was as described, then
24 why did not the officers end it when it first started? I mean,
25 why didn't they, you know, terminate that yard or intervene in

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1 that conflict? How could it go onto the point where -- I don't
2 know how many floors away they were but they were floors away
3 through windows, how could they see and hear that to that great
4 level of detail rather than just intervene when it first
5 occurred and say, hey, you know, she's yelling up to these
6 people on this wing, we're going to cancel her yard. I mean,
7 that, to me, would have been an appropriate intervention. If
8 you let it go on, it's almost as if you're asking to see more
9 so you can to a certain degree justify more discipline.

10 Q. I believe, though, that you mentioned that incarcerated
11 individuals sometimes joke with each other on some things and
12 not always sinister, correct?

13 A. I did.

14 Q. So you mentioned -- but now you're think that any kind of
15 her sort of her acting out they should have cracked down
16 immediately?

17 A. I mean, as the way it's described in testimony, it just,
18 to me, if that was occurring, if you've got someone down there,
19 you know, whatever, giving you two fingers and cussing or
20 yelling up, it would have seemed like they would have
21 intervened and said, you got to knock that off, you know, we're
22 going to end your yard.

23 Q. And do you know how long it took for them to intervene?

24 A. I don't, but what I do know is, you know, both a
25 lieutenant and whoever works for him and then a deputy warden

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1 were able to I guess witness or hear from some distance away at
2 a fairly great level of detail.

3 Q. But then they did intervene once they heard, correct?

4 A. I guess. I mean, yes, they did intervene eventually. I'm
5 just not sure why it took so long.

6 Q. And in terms of the I guess the November 10th sexual
7 assault that caused her to go to Mercy -- and by "her" I mean
8 Ms. Grey -- isn't it true that your testimony is that there is
9 a current investigation underway and that actually Patuxent
10 officials would have transferred Ms. Grey out of the
11 institution but for this litigation?

12 MS. GOLDEN: Objection.

13 THE COURT: I'm not sure the basis for the objection.

14 MS. GOLDEN: That misstates the testimony, I believe.

15 THE COURT: Hold on one second.

16 Overruled. You can answer, Mr. Pacholke.

17 THE WITNESS: Oh. I mean, part of what I'm saying
18 here is this is a very serious allegation where there is some
19 physical evidence, at least photos like this from an outside
20 credible source being a hospital. That would be something that
21 you would intervene in literally immediately. It would be akin
22 to saying somebody escaped but we're not going to do anything
23 until we complete our investigation. I mean, I don't know how
24 you could be running an institution, I certainly -- it wouldn't
25 happen on my watch that you could be running an institution,

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1 get a report like that in from an outside hospital and say, oh,
2 well, we'll let that go through an investigative process, we're
3 not going to do anything, doesn't make sense.

4 BY MS. DONOHO:

5 Q. But isn't it true that they are investigating, so it's not
6 that they're not doing anything; is that correct?

7 A. I assume they're investigating but, you know, it's to not
8 understand and see the photos and understand the reports that
9 come from an outside credible source on physical abuse but yet
10 at the same time you can hear foul conduct in a recreation
11 yard, I mean, it doesn't make sense that that wouldn't rise to
12 the highest level in that institution immediately.

13 Q. But isn't it not true, again, that testimony was that they
14 would have moved Ms. Grey but for this action?

15 A. well, I'm not suggesting that would be the immediate
16 action that you would take because you might remove those two
17 officers or three or however many there were. That might be
18 the initial action in order to ensure that there's no
19 retaliation, there's no intimidation, that you have a fair and
20 open investigation, that to a certain degree you protected her
21 from further harm. So that's what I don't hear. All I hear
22 about is her and not looking at the credibility of the
23 information, the credibility of the evidence and how do we
24 protect her from harm.

25 Q. I do believe that -- is it correct that you did testify,

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1 though, that transferring Ms. Grey would be an appropriate
2 response?

3 A. I don't know that I understood that. Can you please say
4 that one more time?

5 Q. Did you testify that transferring Ms. Grey was the
6 appropriate response?

7 A. I think it would. I mean, if there is a women's unit
8 inside that institution, then why could you not transfer her?
9 It's not like -- I guess you're not interfering with whatever
10 the Court proceeding is today. You're saying it's the same
11 institution, we're giving a different housing assignment.

12 MS. DONOHO: Correct. Court's indulgence. I have no
13 further questions for you.

14 THE COURT: Thank you. Any redirect?

15 MS. GOLDEN: No, Your Honor.

16 THE COURT: Thank you. Thank you, Mr. Pacholke.
17 You're released from this proceeding. Thank you.

18 So I'm checking back in with Ms. Ratliff and Ms. Donoho
19 about, I guess, moving forward from here. I understand that
20 you have two more witnesses; is that correct?

21 MS. DONOHO: That is correct.

22 THE COURT: And we still have the time constraints
23 that we discussed yesterday; you all need to leave?

24 MS. DONOHO: Right.

25 MS. RATLIFF: Yes, Your Honor.

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1 THE COURT: I think we'll need to discuss scheduling,
2 completion of the presentation of evidence and with an eye
3 towards providing time for the parties to make any oral
4 arguments they want to make, with the understanding that you've
5 already briefed the issue. And in planning your oral argument,
6 I wouldn't focus on things that you've already said in your
7 briefs, you know, just to keep the amount of time that we need
8 to spend on that reasonably limited.

9 From my -- I have a trial beginning on Monday, our court
10 is closed the next couple days for the holiday, so that trial
11 is slated to be three days long. At first I was contemplating
12 perhaps ending one of those trial days early to accommodate an
13 hour or so of oral argument but if we need two more witnesses,
14 I think we're going to need more than an hour certainly, so I
15 think that the first day that I'm available for an extended
16 period of time would be next Thursday. So I want to hear from
17 plaintiff's counsel first about their suggestions or
18 availability for rescheduling and then I'll turn to defense
19 counsel.

20 MS. WEBER: Thank you, Your Honor. Plaintiff's
21 counsel is available Thursday and we would just ask if anything
22 opens up in your schedule sooner, the sooner we could get back
23 in the better but we appreciate you accommodating us.

24 THE COURT: Okay. Ms. Ratliff and Ms. Donoho?

25 MS. RATLIFF: Your Honor, I am available before 2:00

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1 p.m. on Thursday and -- Ms. Donoho is not available on
2 Thursday.

3 MS. DONOHO: I'm not available on Thursday or Friday.
4 I need to go to different facilities for different litigation.

5 THE COURT: What about Monday through Wednesday?

6 MS. WEBER: Your Honor, if I may?

7 THE COURT: Yes.

8 MS. WEBER: Certainly I understand that we have
9 multiple counsel but my understanding is Ms. Ratliff can send
10 leads from the Attorney General's Office, I would think they
11 have at large staff at the Attorney General's Office, we'd ask
12 that as long as one of them could be available since time is of
13 the essence, that we proceed.

14 MS. RATLIFF: Your Honor --

15 THE COURT: I still want to hear about Monday through
16 Wednesday because if Ms. Ratliff is not -- it sounds like Ms.
17 Ratliff or Ms. Donoho is available after 2:30, 2:30 next
18 Thursday. That's going to put a limit on how much time we
19 could spend next Thursday because I have a sentencing scheduled
20 for that morning, so there are other time constraints so I
21 still want to hear where they're at on Monday through
22 Wednesday.

23 MS. DONOHO: I am available Monday through Wednesday.

24 THE COURT: Okay.

25 MS. RATLIFF: I am as well, Your Honor. I have a

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1 brief status conference on Monday but I'm sure I can have
2 somebody cover it if necessary.

3 THE COURT: Okay. what about the plaintiff's
4 counsel?

5 MS. GOLDEN: Monday, wednesday, not Tuesday.

6 MS. WEBER: we could be available -- I'm sorry, Your
7 Honor. we could be available Monday and wednesday but not
8 Tuesday, the 4th and the 6th.

9 THE COURT: Right. No, no, we're talking about the
10 27th and the 29th.

11 MS. WEBER: Oh, I'm sorry. Okay. This coming Monday
12 and wednesday. So plaintiffs are available Monday and Tuesday,
13 wednesday before 1 p.m., although if the only possibility is
14 wednesday after 1 p.m. some combination of us will make it
15 work.

16 THE COURT: Okay. You said Monday and Tuesday? I'm
17 sorry.

18 MS. WEBER: Yes. Monday the 27th and Tuesday the
19 28th are completely open. And then our preference would be if
20 it's wednesday the 29th, before 1 p.m. but if needed to go
21 later we would find a way to make it work.

22 THE COURT: Okay. One second here. what about next
23 Friday?

24 MS. WEBER: Plaintiff's counsel we're available
25 Friday, December 1st.

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1 THE COURT: Sounds like Ms. Ratliff's available but
2 not Ms. Donoho.

3 MS. RATLIFF: That's right.

4 THE COURT: I think we'll go ahead and tentatively
5 set it for next Friday to begin at 9:30. If I can get earlier
6 availability I'll take into account the fact that everyone's
7 available on Monday or Tuesday and before 1 p.m. on Wednesday.
8 I don't think Thursday's going to work just given the
9 unavailability of counsel. But we'll go ahead and set it
10 tentatively for Friday and if earlier availability opens up and
11 I'll alert the parties.

12 MS. RATLIFF: So we're talking about the Friday
13 December 1st?

14 THE COURT: December 1st, yes.

15 MS. RATLIFF: Okay. And Ms. Donoho is not available
16 that day.

17 THE COURT: Correct.

18 MS. RATLIFF: I mean, okay. I understand, Your
19 Honor. We did divide the work differently, but I understand
20 Your Honor's concern.

21 THE COURT: I'm not sure what you mean by dividing
22 the work.

23 MS. RATLIFF: I'm sorry. Between our offices,
24 Ms. Donoho.

25 THE COURT: I'm sorry. I was looking at the wrong

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1 screen. It's Ms. Ratliff speaking. You were covering one
2 witness and she was covering another; is that --

3 MS. RATLIFF: Ms. Donoho is covering the two
4 remaining witnesses and has prepared them but I mean, I also
5 understand the time constraints with the Court and parties are
6 under. My preference would be for both counsel to be
7 available.

8 THE COURT: I'd like to get this done before next
9 week so that's the reason why I'm pushing forward. So I think
10 defense counsel need to be prepared to shift that witness.

11 MS. RATLIFF: Okay. I understand, Your Honor.

12 THE COURT: who are the other two witnesses, can you
13 tell me?

14 MS. RATLIFF: Yes. It will be Jason Cleise. He is
15 the case management supervisor at the Western Correctional
16 Institution. And it's going to be Dr. Oscar Jerkins who is the
17 Chief Medical Director for DPSCS. He also prepared an
18 affidavit that was attached to the defendant's opposition.

19 THE COURT: why do we need to hear from Mr. Cleise?
20 I'm not sure I understand.

21 MS. RATLIFF: We had prepared him -- Your Honor, we
22 may not actually call him. I have to review our notes but it
23 may not be that his testimony is specifically relevant
24 especially given some of Your Honor's observations, so we may
25 not call Mr. Cleise.

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1 THE COURT: I mean, if you feel like there's
2 something that I may be missing, I'll hear you out on it, but
3 if you make the assessment that given the issues presented in
4 the motion that, you know, his testimony wouldn't be relevant,
5 then I guess we don't need to -- we don't need to call him. So
6 we're focused on Mr. Jenkins then, and how much time do you
7 anticipate needing Mr. Jenkins on direct examination?

8 MS. DONOHO: We anticipated about 30 minutes on
9 direct, Your Honor.

10 THE COURT: Okay. That's going to be helpful to me
11 in terms of scheduling, and if we can fit this in earlier in
12 the week, I'll advise the parties on early next week about
13 that, but for now we'll just plan for next Friday at 9:30.

14 MS. WEBER: No, Your Honor, if I may with respect to
15 Dr. Jenkins, one thing that might speed up that testimony, it
16 sounded initially like it's defendants were planning to call
17 Mr. Jenkins as an expert witness which we will challenge. His
18 declaration as far as when I read it I don't see any expert
19 opinion. I just see his own personal knowledge. So if you're
20 able to resolve the expert issue earlier that would save us
21 time but I just wanted to highlight that.

22 THE COURT: Is that the plan, Ms. Ratliff, to have
23 him offer expert opinion?

24 MS. RATLIFF: No, Your Honor. He will be testifying
25 to personal knowledge and -- yeah, personal knowledge, Your

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1 Honor.

2 THE COURT: Okay. That's 30 minutes of testimony on
3 direct examination, so I guess that answers that, Ms. Weber.

4 MS. WEBER: Yes. Thank you.

5 THE COURT: All right. Unless there's anything else
6 for us to address before we adjourn, is there anything from
7 plaintiff's counsel?

8 MS. WEBER: No. Thank you, Your Honor.

9 THE COURT: All right. Anything from the defense?

10 MS. RATLIFF: No, Your Honor.

11 THE COURT: I hope you all enjoy the holiday, and
12 I'll see you next week.

13 MS. RATLIFF: Same to you, Your Honor.

14 MS. DONOHO: Thank you.

15 MS. WEBER: Thank you, Your Honor.

16 MS. GOLDEN: Thank you.

17 (The proceedings adjourned at 11:54 a.m.)

18 CERTIFICATE OF OFFICIAL REPORTER

19 I, Amanda L. Longmore, Registered Professional Reporter
20 and Federal Certified Realtime Reporter, in and for the United
21 States District Court for the District of Maryland, do hereby
22 certify, pursuant to 28 U.S.C. § 753, that the foregoing is a
23 true and correct transcript of the stenographically-reported
24 proceedings held in the above-entitled matter and that the
25 transcript page format is in conformance with the regulations
of the Judicial Conference of the United States.

Dated this 8th day of February 2024

-S-

AMANDA L. LONGMORE, RPR, FCRR
FEDERAL OFFICIAL COURT REPORTER

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